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CIVIL AND POLITICAL RIGHTS, INCLUDING RELIGIOUS INTOLERANCE

Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18

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Introduction

1. At its forty-second session, the Commission on Human Rights decided, in resolution 1986/20 of 10 March 1986, to appoint for one year a special rapporteur to examine incidents and governmental action in all parts of the world inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and to recommend remedial measures for such situations.

2. In accordance with that resolution, the previous and current Special Rapporteurs have submitted the following reports to the Commission on Human Rights since 1987: E/CN.4/1987/35; E/CN.4/1988/45 and Add.1; E/CN.4/1989/44; E/CN.4/1990/46; E/CN.4/1991/56; E/CN.4/1992/52; E/CN.4/1993/62 and Add.1 and Corr.1; E/CN.4/1994/79; E/CN.4/1995/91 and Add.1; E/CN.4/1996/95 and Add.1 and 2; E/CN.4/1997/91 and Add.1; E/CN.4/1998/6 and Add.1 and 2). Since 1994, reports have also been submitted to the General Assembly (A/50/440; A/51/542; A/52/477 and Add.1, A/53/279). The present report is submitted in accordance with Commission on Human Rights resolution 1998/18 of 9 April 1998.

I. INITIATIVES BY THE SPECIAL RAPPORTEUR TO IDENTIFY LEGISLATION AND CONDUCT STUDIES IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION CONCERNING RELIGION OR BELIEF AND TO DEVELOP A CULTURE OF TOLERANCE

A. Legislation

3. The Special Rapporteur deems it necessary to establish a compendium of national enactments on or relating to freedom of religion and belief (see E/CN.4/1998/6, para. 16). This initiative was taken in the framework of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and various resolutions of the Commission on Human Rights and General Assembly; it also addresses the recommendations made in the studies of several special rapporteurs and in the reports of the Secretary-General in the field of religion and belief (see E/CN.4/1998/6, chap. II).

4. The Special Rapporteur's aim is to create a basic reference work, to be updated regularly. This international compendium would serve several purposes:

(a) Provision of accurate information on the legal position of States and its evolution in matters relating to religion and belief;

(b) Preparation of a comparative study of national legislation and its conformity with international law to serve as a mutually influencing factor between bodies of legislation and encourage States to communicate information on their legislative advances;

(c) Examination of allegations received in the field of tolerance and non-discrimination based on religion or belief;

(d) Preparation of *in situ* visits and their follow-up;

(e) Contribution to research and studies on religion and belief;

(f) Contribution to the preparation of the technical cooperation programmes of the Office of the United Nations High Commissioner for Human Rights on freedom of religion and belief.

5. To date the Special Rapporteur has received replies from the following 48 States to his request for the text of the constitutions in force or any equivalent instruments, and also legislation and regulations relating to religious freedom and the practice of worship: Algeria, Armenia, Azerbaijan, Bangladesh, Bolivia, Cambodia, Cape Verde, Chile, Cyprus, Cuba, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Ethiopia, Finland, France, Indonesia, Israel, Italy, Japan, Jordan, Kuwait, Malta, Mauritius, Namibia, Pakistan, Poland, Portugal, Qatar, Republic of Korea, San Marino, Saudi Arabia, Seychelles, Slovakia, Sudan, Sweden, Switzerland, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam and Yugoslavia.

B. Studies

6. In order to encourage reflection on and analysis of matters of freedom of religion and belief, while giving greater consideration to priority issues such as economic, social and cultural rights, the right to development, gender issues and women's rights, the Special Rapporteur wishes to undertake an initial series of studies on the following topics:

(a) Discrimination against women attributable specifically to their status as women within churches and religions;

(b) Proselytism, freedom of religion and poverty;

(c) Sects, new religious movements, communities based on religion, belief and human rights.

These studies should be enhanced and supplemented through simplified access, using modern technology, including the Internet (see sect. V), to all research on freedom of religion and belief conducted at the international level.

C. Culture of tolerance

7. The Special Rapporteur considers it essential that special attention must continue to be paid to traditional "mandate fulfilment" activities, namely, in most cases, a posteriori action on human rights violations. At the same time, however, a strategy to prevent intolerance and discrimination must be devised. Of importance in this regard is Commission on Human Rights resolution 1998/74, entitled Human rights and thematic procedures, in which the thematic special rapporteurs are requested to make recommendations for the prevention of human rights violations (para. 5 (a)).

8. The Special Rapporteur is of the view that prevention can be ensured mainly by the establishment of a culture of tolerance, notably through education, which can make a decisive contribution to the inculcation of human

rights values and the emergence of attitudes and behaviour which reflect tolerance and non-discrimination. Thus the schools, which are essential components of the educational system, constitute an essential and unique means of preventing intolerance and discrimination, through the dissemination of a culture of human rights.

9. It is worth recalling that the 1968 International Conference on Human Rights held in Tehran, which reviewed the progress made since the adoption of the Universal Declaration of Human Rights and formulated a programme for the future, asked States to ensure that all means of education should be employed so that youth might grow up and develop in a spirit of respect for human dignity and equal rights. Also in 1968, the General Assembly requested States Members to take steps, as appropriate and according to the scholastic system of each State, to introduce or encourage the principles proclaimed in the Universal Declaration of Human Rights and in other declarations. In 1978, UNESCO held an international congress on teaching of human rights, and a similar meeting was held in Bangkok in 1987, under the auspices of the United Nations Centre for Human Rights. Since then, both UNESCO and the United Nations human rights services have sought to disseminate a culture of human rights, and hence tolerance, through various activities. It should also be noted that General Assembly resolution 49/184 of 23 December 1994 proclaimed the 10-year period beginning on 1 January 1995 the United Nations Decade for Human Rights Education.

10. The Special Rapporteur notes with appreciation the following recent initiatives of the Commission on Human Rights and General Assembly:

(a) The appointment of a Special Rapporteur whose mandate focuses on the right to education and includes the following: "(iii) To take into account gender considerations, in particular the situation and needs of the girl child, and to promote the elimination of all forms of discrimination in education." (resolution 1998/33, para. 6 (a) (iii));

(b) The Commission's adoption of resolution 1998/21, entitled Tolerance and pluralism as indivisible elements in the promotion and protection of human rights. In the resolution, the Commission states that promoting a culture of tolerance through human rights education is an objective that must be advanced in all States, and that the Office of the United Nations High Commissioner for Human Rights and mechanisms of the United Nations human rights system have an important role to play in that regard; it reiterates the obligation of all States and the international community, in particular, to promote a culture conducive to promoting and protecting human rights, fundamental freedoms and tolerance, inter alia through education leading to genuine pluralism, a positive acceptance of diversity of opinion and belief, and respect for the dignity of the human person (para. 2 (f));

(c) The General Assembly's adoption, on 4 November 1998, of resolution 53/22, entitled United Nations Year of Dialogue among Civilizations, in which the Assembly "1. Expresses its firm determination to facilitate and promote dialogue among civilizations; 2. Decides to proclaim the year 2001 as the United Nations Year of Dialogue among Civilizations; 3. Invites Governments, the United Nations system, including the

United Nations Educational, Scientific and Cultural Organization, and other relevant international and non-governmental organizations, to plan and implement appropriate cultural, educational and social programmes to promote the concept of dialogue among civilizations ...".

11. With regard to the Special Rapporteur's present mandate, it is recalled that the Commission on Human Rights, in paragraph 14 of resolution 1994/18, encouraged the Special Rapporteur to examine the contribution that education could make to the more effective promotion of religious tolerance. The Special Rapporteur therefore conducted a survey, by means of a questionnaire addressed to States, on problems relating to freedom of religion and belief from the standpoint of the curricula and textbooks of primary or elementary and secondary educational institutions. The results of such a survey could help to shape an international educational strategy centred on the definition and implementation of a common minimum curriculum of tolerance and non-discrimination, for combating all forms of intolerance and discrimination based on religion or belief.

12. The following 77 States replied to the questionnaire: Algeria, Andorra, Armenia, Austria, Bahrain, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Chile, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Cyprus, Denmark, Djibouti, Ecuador, Egypt, France, Germany, Guatemala, Holy See, Honduras, Iceland, India, Indonesia, Iraq, Israel, Italy, Kyrgyzstan, Latvia, Lesotho, Liechtenstein, Luxembourg, Mali, Marshall Islands, Mauritius, Mexico, Morocco, Namibia, Nauru, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Paraguay, Philippines, Portugal, Republic of Korea, Romania, Saint Lucia, San Marino, Senegal, Singapore, Slovakia, Spain, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia and Zambia.

13. These replies were used as the basis for a number of provisional comments (see E/CN.4/1998/6, paras. 38 to 46) which need to be finalized in order to elaborate a set of conclusions and recommendations to be used in devising an international educational strategy of the kind mentioned above. It is therefore of crucial importance that the Special Rapporteur should be provided with the minimum resources necessary to enable him to complete this vital task in a timely, serious and precise manner. In resolution 1998/18, adopted at its fifty-fourth session, the Commission on Human Rights urged States "to promote and encourage through the educational system, and by other means, understanding, tolerance and respect in matters relating to freedom of religion or belief" (para. 4 (g)). To this end, there is an urgent need to provide States with the results of the survey conducted by the Special Rapporteur in the field of education, which they have supported through their contributions.

II. INITIATIVES BY STATES AND NON-GOVERNMENTAL ORGANIZATIONS

14. The Oslo Conference on Freedom of Religion or Belief was held from 12 to 15 August 1998 in the context of the fiftieth anniversary of the Universal Declaration of Human Rights. The goal of the Conference - an initiative of Norwegian NGOs and institutes (Cooperation Council for Faith and Life Stance Societies; Council on Ecumenical and International Relations, Church of

Norway; Diakonjemmet College Research Center; Institute for Human Rights, University of Oslo) and the Tandem Project NGO, and financed by the Norwegian Government - was to build an international coalition and to develop a plan of action to strengthen the mandate of the Special Rapporteur on religious intolerance and, therefore, the implementation of article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

15. The Conference, which was attended by representatives of Governments, religious communities (Buddhist, Christian, Jewish, Muslim, etc.) academic institutions and NGOs, adopted the Oslo Declaration on Freedom of Religion or Belief, the main principles of which are as follows:

(a) Change in the Special Rapporteur's title, to "Special Rapporteur on Freedom of Religion or Belief"; study and application of articles 18 of the Covenant and the 1981 Declaration as a way of solving problems of intolerance and discrimination; creation of educational programmes using the 1981 Declaration as a universal standard to build a culture of tolerance, understanding and respect; use by United Nations Member States of the 1981 Declaration and other instruments to promote mediation and negotiation and resolve intolerance, discrimination, injustice and violence in conflicts where religion or belief plays a role; research and development of other informational resources and methodologies for collecting information, initiating comparative studies, etc.;

(b) The last paragraph of the Oslo Declaration reads as follows: "[The participants] urge the organizers and sponsors of the Oslo Conference, in consultation with Conference participants:

[i] to review the discussions and recommendations of the Conference, with the purpose of creating an 'Oslo Coalition on Freedom of Religion or Belief', inviting support and participation by Governments, religious or belief communities, academic institutions and non-governmental organizations, and

[ii] to develop a strategic plan of action and seek funding to carry out programmes and projects based on its recommendations, in cooperation with the United Nations."

In his closing statement, the Minister for International Development and Human Rights said that "The Special Rapporteur should be given the necessary means and resources to actively promote the cause of victims of intolerance based on religion or belief all over the world. The Norwegian Government has this year contributed an additional US$ 1.5 million to the High Commissioner for Human Rights to this end." The Special Rapporteur thanks the Norwegian Government and the organizers of the Oslo Conference for their commitment to strengthening his mandate.

16. The Special Rapporteur also welcomes the initiatives of Spain, which organized a seminar on dialogue among the major monotheistic religions at Toledo on 9 and 10 November 1998, and the Office of the United Nations High

Commissioner for Human Rights, which sponsored a seminar on "enriching the universality of human rights: Islamic perspectives on the Universal Declaration of Human Rights" (Geneva, 9-10 November 1998).

III. IN SITU VISITS AND FOLLOW-UP

17. In accordance with Commission on Human Rights and General Assembly resolutions, the Special Rapporteur generally makes two in situ visits a year to States with different political, economic, social and religious systems. Ten visits have taken place since 1994: China (November 1994; E/CN.4/1995/91); Pakistan (June 1995; E/CN.4/1996/95/Add.1); Iran (December 1995; E/CN.4/1996/95/Add.2); Greece (June 1996; A/51/542/Add.1); Sudan (September 1996, A/51/542/Add.2); India (December 1996; E/CN.4/1997/91/Add.1); Australia (February-March 1997; E/CN.4/1998/6/Add.1); and Germany (September 1997; E/CN.4/1998/6/Add.2); in January and February of this year, the Special Rapporteur visited the United States of America and Viet Nam (reports to be submitted to the fifty-fifth session of the Commission as documents E/CN.4/1999/58/Adds.1 and 2). The Special Rapporteur has received an invitation to visit Turkey in 1999. Requests to visit Indonesia, Mauritius, Israel and the Russian Federation have not yet been acted on.

18. With reference to the difficulties of varying importance, encountered during his visits to the United States of America and Viet Nam, the Special Rapporteur reiterates that he alone is responsible for preparing and conducting missions, in connection with which all the parties concerned must strictly observe the rules and principles implicit in the special procedures mandate for inquiring into religious intolerance, such as the Special Rapporteur's independence, freedom of movement, freedom of assembly, and in particular, freedom to meet any individual or organization he feels could clarify various matters, with no constraints or repercussions whatever, etc.

19. The Special Rapporteur wishes to emphasize the desirability and overriding importance, both for his mandate and for his official and non-governmental interlocutors, of the above-mentioned rules and principles being respected, if he is to be able to do his job properly, namely:

(a) In situ examination of incidents and governmental action inconsistent with the provisions of the 1981 Declaration and of positive experiences and initiatives in the field of tolerance and non-discrimination based on religion or belief;

(b) Formulation of recommendations for use not only by the State visited, but also by the international community.

In any event, the Special Rapporteur will continue to carry out his mandate in a completely independent and objective manner, regardless of conditions, and to render an account not only of the difficulties, but also of the cooperation and initiatives encountered in his work.

20. In situ visits, therefore, are in no way a reflection of reservations or nagging doubts; on the contrary, they promote dialogue and understanding which should lead to a thorough and balanced review of the situation, eschewing all Manicheism and combining positive and negative features that evolve in

different ways with time and in various countries. The Special Rapporteur also believes that all States, without exception, should be visited according to a programme reflecting short-, medium- and long-term needs.

21. In order to promote the dialogue mentioned above, the Special Rapporteur initiated a visit follow-up procedure in 1996, providing States with an opportunity to send their comments and any information on action taken or envisaged to implement the recommendations made in the mission reports. Most States have cooperated in this procedure; follow-up tables were sent to the following countries, all of which replied, with the exception of Iran: China (follow-up table and reply: 1996, A/51/542); Pakistan (follow-up table: 1996, A/51/542; reply, A/52/477/Add.1); Iran (follow-up table: 1996, A/51/542; no reply); Greece (follow-up table: 1997, A/52/477/Add.1; reply: 1997, E/CN.4/1998/6); Sudan (follow-up table: 1997, A/52/477/Add.1; reply: 1997, A/52/477/Add.1); India (follow-up table: 1997, A/52/477/Add.1; reply: 1998, A/53/279). Follow-up tables were recently sent to Germany and Australia (see annex). The Special Rapporteur reiterates his request to Iran, a country which has always spoken in favour of cooperation, and hopes that it will do more to put its words into action.

22. The Special Rapporteur wishes to thank States for their cooperation, as well as NGOs, personalities and individuals for their valuable help during his in situ visits.

IV. POSITION AS REGARDS COMMUNICATIONS SENT BY THE SPECIAL RAPPORTEUR AND REPLIES RECEIVED FROM STATES SINCE THE COMMISSION'S FIFTY-FOURTH SESSION

23. This section is concerned with communications sent since the fifty-fourth session of the Commission on Human Rights, the replies or absence of replies from the States concerned, and late replies. Before summarizing and analysing the communications and replies received, the Special Rapporteur would like to make the following comments, in the interest of clarification:

(a) Since 1995, United Nations budgetary restrictions limiting reports to 32 pages have had a direct political impact on human rights mechanisms. The Special Rapporteur has been able to publish neither the text of his communications and the very enlightening replies received from States, nor the analyses of these replies.

(b) The communications sent by the Special Rapporteur do not cover all incidents and governmental action taken in all parts of the world inconsistent with the 1981 Declaration. Only certain States are analysed below, but that does not mean that there are no problems in others. In addition, the length of a communication or the existence of several communications for a single State does not reflect the extent of intolerance and discrimination in that State. Similarly, the fact that a communication deals with one form of intolerance or discrimination does not imply the absence of other forms of violations in that State.

(c) The communications concern cases or situations of intolerance and discrimination, but it is important to bear in mind that (i) cases may be isolated incidents of an exceptional nature which do not preclude the

existence of a general situation that is positive, or cases which reflect a general situation of intolerance and discrimination and (ii) certain situations may affect freedom of religion and belief in general, various aspects of those freedoms, or certain communities based on religion or belief.

(d) The communications do not cover all religions and all beliefs, and the frequency with which religions and beliefs are the subject of communications does not reflect their general situation in the world.

(e) The communications fail to bring out positive experiences of unquestionable value, such as Spain's initiative with regard to religious minorities or that of Egypt in combating religious extremism.

A. Summary of communications sent and replies received

24. Since the fifty-fourth session of the Commission on Human Rights, the Special Rapporteur has sent 63 communications (including four urgent appeals to Iran and the Sudan) to the following 46 States: Afghanistan (3), Albania, Angola, Azerbaijan, Bangladesh, Belarus, Belgium, Bulgaria, Buthan, China (2), Cyprus, Democratic People's Republic of Korea, Egypt (3), Eritrea, Georgia, Germany, Ghana, Greece, India (3), Indonesia (2), Iran (5), Iraq, Kazakhstan, Lao People's Democratic Republic, Latvia, Malaysia, Maldives, Mali, Mauritania, Mexico, Morocco, Myanmar, Pakistan, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Spain, Sri Lanka, Sudan (3), Turkmenistan (2), Turkey (2), Ukraine, United Kingdom of Great Britain and Northern Ireland, Uzbekistan and Yemen.

25. The following 22 States have responded to these 63 communications sent to 46 States, for which the deadline for reply has expired: Afghanistan, Bangladesh, Belarus, Belgium, Buthan, China, Egypt, Eritrea, Greece, Indonesia, Iran (2), Lao People's Democratic Republic, Maldives, Mexico, Morocco, Myanmar, Romania, Saudi Arabia, Sri Lanka, United Kingdom of Great Britain and Northern Ireland, Turkey and Uzbekistan.

Afghanistan

26. All three communications concern the Taliban's policy of intolerance and discrimination in the name of religion, which affects Afghan society as a whole and women and Shiite Muslims in particular. Two communications reveal that the Taliban has introduced what is in point of fact a system of apartheid in respect of women, based on its interpretation of Islam: exclusion of women from society, employment and schools, obligation for women to wear the burqa in public and restrictions on travel with men other than members of the family. A third communication concerns violations committed by the Taliban when they captured Mazar-i-Sharif on 8 August 1998, namely, killings of thousands of civilians, including at least 70 men executed on Abduli Ali Mazari's tomb according to the halal ceremony, used for the slaughter of animals; assassinations of Iranian diplomats, sometimes because of their affiliation with Shi'ism; abduction and forced marriage of young women to Talibans; and adoption of the Sunnite faith on pain of execution. The Special Rapporteur believes that the maintenance, openly and publicly, of an apartheid policy of this nature is abnormal, from the standpoint of human rights.

27. In reply to the latter communication, the authorities officially representing Afghanistan stated: "The incidents mentioned in your letter are perfectly accurate, and we urge you to give these atrocities the widest possible publicity."

Albania

28. The principal religious communities complain of the slow process of restoration of property confiscated under the former regime.

Germany

29. The tennis player Arnaud Boetsch and the musician Enrique Ugarte reportedly lost contracts because of their affiliation with Scientology. A police chief in Berlin was allegedly fired because of his affiliation with Scientology, which he denied; he was eventually reinstated for lack of evidence.

Angola

30. The Angolese army reportedly massacred 21 Christians, including a deacon, in the Cabinda enclave.

Saudi Arabia

31. Christians of Philippine and Netherlands nationality were allegedly arrested after a bible was found near a residence in Riyadh. Five of them were allegedly expelled from the national territory and eight others transferred to detention cells pending expulsion.

32. Saudi Arabia replied, "No interdiction has been imposed on any non-Muslim person to practice his religious belief in Saudi Arabia, although the Saudi population is entirely of the Muslim religion. However, the Saudi population respects the belief of non-Muslims, according to the general regulation in force in Saudi Arabia and in conformity with the provisions of article 18, paragraph 3 of the International Covenant on Civil and Political Rights. Non-Muslim persons have the right to practise their religious ceremony within their residence. Article 37 of the Basic System of Saudi Arabia stipulates: Houses are inviolable. They shall not be entered without permission from their owners. Regarding this case, those persons have sought to transgress security by probably exercising religious activities which irritated the fury and rage of some citizens. This action has called for the intervention of the security forces to settle the problem. The persons involved have been arrested to safeguard security and to avoid any repercussions since they could become victims. All the persons involved have been released and have left Saudi Arabia for their country. They have not been expelled ... The allegation specifying that those persons have been subject to coercive detention and torture or ill-treatment, is absolutely inadmissible and is not supported by conclusive evidence. The regulation in force in Saudi Arabia guarantees the non-occurrence of such practices and the law punishes the perpetrators firmly."

33. The Special Rapporteur wishes to emphasize Saudi Arabia's attitude towards freedom of religion, which takes into account the concept that there should be no coercion in religious matters. The Special Rapporteur hopes that this attitude will become increasingly widespread and accepted in practice.

Azerbaijan

34. The Jehovah's Witnesses and other communities allegedly experience acts of intolerance aimed at forcing them to pay bribes to officials responsible for registration procedures. A minister, a Muslim convert to the Christian religion, was reportedly arrested twice in 1997.

Bangladesh

35. A group of extremist Muslims in Dhaka has allegedly been responsible for acts of vandalism (damage to religious property, atmosphere of fear) against the Christian community.

36. Bangladesh replied: "The Saint Francis Xavier Girls' High School is adjacent to Shahi Mosque in Laxmibazar, Dhaka. There is a competing claim by the school and mosque authorities with regard to possession of an abandoned one-room structure and a wall on disputed land lying between the school and the mosque. This is a long-standing dispute. A lawsuit on the matter is pending with the Court. On 28 April 1998 around 11 a.m., a lawyer acting on behalf of the school authorities claimed that the Court had issued a judgement in their favour. In the presence of the police force, he ordered the demolition of the wall and the structure, and with the assistance of some workers they proceeded with the demolition work. This gave rise to a tense situation which was quickly brought under control with the assistance of the local administration. The necessary legal measures were taken and charges have been filed with the local police station against those involved. The situation soon returned to normal. Meanwhile, the members of the local Christian community and the school authority met the Prime Minister and apprised her of the matter. The Prime Minister guaranteed them full protection and specifically reassured them that all measures would be taken according to the law with regard to the disputed property. The matter is receiving the active attention of the Government."

37. The Special Rapporteur is pleased to note the reaction of the Bangladesh authorities and draws attention to the need to help fringe groups in society become more tolerant through the formulation of a policy of teaching tolerance at all levels.

Belarus

38. The main religious communities complain of the slow process of restitution of property confiscated under the former regime.

39. Belarus replied that questions relating to the restitution to religious organizations and communities of former places of worship, or of other buildings suitable for worship by way of compensation, have been referred to the State Committee on Religion and Nationality. There have been cases of

restitution and compensation involving Jewish and Christian communities: Golgotha Evangelical Baptist Church, Catholic Church and Orthodox Church. Several religious communities enjoy advantages, such as tax exemption, with respect to the reconstruction or renovation of restituted places of worship. Material and financial aid is also provided by the local authorities. The reply states, "It should be noted that the restitution process, certain aspects of which involve relations between nationalities, is by definition sensitive and delicate. The Belarusian Government considers that this question should be settled through consultation between the authorities and the representatives of various national and religious minorities, which should be guaranteed equal rights and resources, care being taken not to violate the fundamental rights and freedoms of the majority. Another challenge is to avoid any action which might provide a particular religious community or congregation with a dominant or special position in society, which could give rise to conflicts between nationalities or religious conflicts."

40. The Special Rapporteur expresses his appreciation of this policy and understands the difficulties encountered; he hopes that it will have the maximum impact in promoting human rights in general and freedom of religion and belief in particular.

Belgium

41. New legislation reportedly establishes a "sect oversight organization". However, a report covering 189 organizations, including Baha'is, Hasidic Jews, Evangelists, Pentecostalists and Adventists, is said to be based on rumour rather than serious inquiries. Some communities were allegedly not invited to the hearings of the Parliamentary Commission on Sects or were not given an opportunity to defend themselves in time. Their inclusion in the above-mentioned report has apparently caused difficulties for some communities (in renting public premises, for example).

42. Belgium presented a detailed explanation of the functioning and mandate of the Parliamentary Commission responsible for producing a policy to curb sects and the dangers they represent to individuals, and in particular minors; it provided definitions of the terms "secte" ("organized group of individuals espousing the same doctrine within a religion" - the Commission considers sects in this sense to be respectable and to reflect the normal exercise of the freedom of religion and assembly guaranteed by fundamental rights) and "organisation sectaire nuisible" (harmful sectarian organization) ("group having or claiming to have a philosophical or religious purpose whose organization or practice involves illegal or injurious activities, harms individuals or society or impairs human dignity"). The synoptic table of 189 groups in the Commission's report indicated that (a) the information in question was provided either by official agencies (gendarmerie, judicial police, State security police, general information and security service, prosecution services) on the basis of interviews, or by direct or indirect witnesses questioned under oath; (b) the group listing represented neither the Commission's position nor a value judgement on its part; (c) a thorough investigation was conducted of all movements and the table updated accordingly. During the plenary debate in the House, the rapporteur explained that the Commission had limited itself to a record-keeping role. In the course of follow-up action, a law was adopted establishing an independent

centre for information and advisory assistance in connection with harmful sectarian organizations. The law is aimed at certain practices of sectarian organizations regarded as harmful to individuals and society or as impairing human dignity; it also stipulates that the harmful nature of a sectarian group is to be evaluated by reference to the principles contained in the Belgian Constitution, laws, decrees and orders and in the international human rights instruments ratified by Belgium.

43. The Special Rapporteur thanks the Belgian authorities for their well-researched, specific and instructive reply, and notes that meticulous and correctly-presented information makes it possible to avoid generalizations and routine assumptions. In his opinion, Belgium's approach to the problem is well worth following since it could result in a useful yardstick if it succeeded in making a clear-cut practical and operational distinction between what did and what did not constitute freedom of religion.

Bhutan

44. It is alleged that Buddhism is given preferential treatment and that the practice of Buddhism is compulsory for all in schools, on pain of punishment. In 1997 several Buddhist nuns and religious teachers were allegedly arrested for taking part in peaceful demonstrations and their monasteries were closed by the authorities.

45. Bhutan provided a detailed description of the country's situation and the historical background of religions: the two principal recognized religions are Buddhism and Hinduism, the Bhutanese being free to practise and profess the religion of their choice. In accordance with a 1974 National Assembly resolution, there are restrictions on proselytizing in public. School curricula, with the exception of those of monastic schools, make no provision for religious instruction or practice; however, a prayer common to Buddhism and Hinduism is recited daily in all schools, and prayers are said in boarding schools at the secondary level; no problems are raised by these prayers. The Bhutanese authorities have stated that:

> "Allegations of arrests of monks and religious teachers have been made in the context of allegations of discrimination by the Royal Government against the Nyingmpa school of Buddhism in favour of the Drukpa Kargyupa school. This allegation is totally absurd, as no difference of treatment exists between the two schools, which are well integrated and coexist in total harmony ... One hundred fifty persons were arrested in eastern Bhutan in 1997 for their involvement in disturbance of the peace and attempts to incite communal discord. On the basis of the investigations carried out by the police, 38 persons were released immediately and 112 were charge-sheeted in a court of law for collaborating with subversive elements in Nepal, accepting money from them and carrying out activities such as organizing mob demonstrations by enticing innocent villagers with money and trying to incite sectarian violence. On the day slated for the demonstrations in October 1997, a conflict emerged between the above persons and the villagers who were against the attempts of these people to incite communal violence. As a result most of these 150 persons were apprehended by the local people and handed over to the Royal Bhutan Police. It may be pointed out that

one Thinley Yoezer of the Drametse Buddhist school was the main person responsible for inciting and instigating people in eastern Bhutan. It was on his directives that many active collaborators spread false and malicious allegations against the Royal Government, conducted several meetings and plotted to take up seditious activities in eastern Bhutan. To finance these activities, Thinley Yoezer received a total sum of Nu 125,000 and a large amount of seditious literature from subversive elements in Nepal."

It was also explained that monasteries, like other places of worship, could not be closed, and that a few recently-established schools of religious study had been closed following an inspection which showed that they failed to meet the minimum criteria with regard to curricula, teachers and premises; the schools would be allowed to reopen when these conditions had been met.

Bulgaria

46. An atmosphere of intolerance in the Bulgarian media and society is said to be adversely affecting minorities in the field of religion and belief (Muslims, Jehovah's Witnesses, Church of God, Emmanuel Bible Center).

China

47. It is alleged that the authorities in the Tibet Autonomous Region interfere with religious beliefs and practices (forced re-education campaign for monks and nuns, limitation of their number in places of worship, prohibition of photos of the Dalai Lama, detention of Gedhun Choekyi Nyima, who has been recognized by the Dalai Lama as the Panchen Lama). One communication concerns Yulo Dawa Tsering, a Tibetan monk whom the Special Rapporteur met when he visited China in 1995 (E/CN.4/1995/91, paras. 115 and 175-177). An urgent appeal followed by reminders, alleging that the monk was being detained, had been sent in the context of preceding reports (E/CN.4/1997/91, para. 10; E/CN.4/1998/6, para. 67). The Chinese authorities had replied that Yulo Dawa Tsering had enjoyed all the civil rights set forth in the Chinese Constitution since the end of the period of conditional release. This latest communication contains information alleging police surveillance of Yulo Dawa Tsering, who is reportedly unable to continue residing in his monastery at Ganden or travel to his university at Lhassa.

48. China replied that the Government respected religious freedom, as the law required, and did not interfere in the Tibetan people's religious freedom. Concerning the patriotic re-education movement, it explained that, as citizens of the People's Republic of China, Buddhist monks and nuns were duty-bound to undergo patriotic re-education. It stated that religion must adapt to the local society and to its development and operate within the confines of the Constitution and laws. The patriotic re-education being conducted in Tibet's temples and monasteries was not intended to restrict the masses' right to religious freedom but to establish good order and guarantee freedom of religion. Lastly, patriotic re-education enjoyed the approval of Buddhist monks and nuns and the religious public, and there had been no instances of arrests or expulsions of monks or nuns. The decline in the number of Tibetan monks and nuns was explained as follows: (a) the 1,787 restored and newly-opened places of worship, with their 4,600 resident monks and nuns, were

entirely adequate to satisfy the requirements of the religious public; (b) the recent expansion of the Tibetan economy had provided many job opportunities for Tibetans, especially young people, and had led to a reduction in the number of people electing to join monastic communities; (c) since the 1990s, preferential education policies in the Tibetan region had led young Tibetans to study culture and science rather than enter monasteries. However, Tibetan monks and nuns still accounted for 2 per cent of Tibet's population. The reply stated that the Dalai Lama used religion (an example being the designation of the Panchen Lama) to pursue separatist activities, of which the great bulk of monks and nuns and religious believers in Tibet disapproved. The reply denied the allegation that the child designated as Panchen Lama by the Dalai Lama was being detained and the following explanation was given: the security measures for the boy and his parents had been adopted at their request following an abduction attempt by exiled Tibetan separatists. The reply noted that Chadrel Rinpoche, Champa Chung and Samdrup (see E/CN.4/1996/95, para. 40; E/CN.4/1997/91, para. 43 (e); E/CN.4/1998/6, para. 73; A/52/477, para. 36) had been sentenced to prison terms for imperilling the unity of the State and ethnic cohesiveness and damaging stability and development in Tibet; it was noted that, as Chadrel and Champa had infringed the State Secrets Law, it had been decided to hold the trial in camera.

Cyprus

49. It is alleged that, in the areas controlled by the Turkish Army, a policy of intolerance and religious discrimination is directed against non-Muslims and their religious property (more than 500 places of worship and cemeteries desecrated and the Saint Makar Armenian monastery converted into a hotel, etc.).

Egypt

50. Professor Hassan Hanafi was allegedly declared an apostate by Al-Azhar scholars because of his interpretations of Islam. One communication also speaks of excesses committed by armed extremist groups - Al-Gihad and Al-Gama'a al-Islamiya - against all segments of Egyptian society, and in particular law enforcement officers, intellectuals and Copts. From May 1992 to December 1997, in the Provinces of Minya, Asyut and Qena, Upper Egypt, several Copts were reportedly murdered by Al-Gama'a al-Islamiya because of their Christian beliefs; in 1998, three Copts were allegedly executed. It is also reported that Copts are victims of racketeering and that their churches are attacked. According to another communication, in July 1998, security forces in Maadi closed an unauthorized Coptic church. However, the procedure for obtaining a construction or renovation permit is said to be so complicated that such permits are virtually never granted.

51. In connection with the Hanafi case, Egypt replied that statements made by this Cairo University professor during a talk had been criticized by a certain Al-Azhar Scholars' Association which had regarded them as a departure from the Muslim religion. The Egyptian authorities pointed out that the association in question was not legally empowered to review or assess research into Muslim religious teachings, and that no measures had been taken by anyone against Professor Hanafi. Egypt also referred to the facts in the Abu Zeid

case (E/CN.4/1997/91, paras. 12-15) and the legislative amendments made to streamline hisba proceedings, and noted that the decision ordering Mr. and Mrs. Abu Zeid to separate had been suspended and later annulled.

52. The Special Rapporteur has already expressed his appreciation of Egypt's legislation and policy to combat religious extremism. He would, however, like to emphasize the fact that the position adopted by the Al-Azhar Scholars' Association could jeopardize Professor Hanafi, and that it is for the State to take appropriate measures to ensure the safety of citizens and of all individuals living in its territory, on the understanding that extremism, which is alien to freedom of religion, is likely to confirm the very fears it raises. The allegations of various incidents against Christians, on which Egypt has not presented its views and comments, could potentially confirm the above-mentioned fears.

Eritrea

53. The authorities are reportedly considering the implementation of a declaration imposing drastic limitations on religious communities by prohibiting any activities other than religious services. As a result, religious property, such as schools and clinics, could be confiscated by the authorities.

54. Eritrea replied that its legislation was in conformity with the 1981 United Nations Declaration. In order to correct situations dating from the pre-independence era, characterized by the provision of health care and education on the basis of religious preference, the Government after independence consulted various religious bodies and decided to establish, jointly with the World Bank, a "Community Rehabilitation Fund" programme to provide everyone with the services mentioned above. An agreement was drawn up under which religious bodies would be able to engage in proselytism and run theological institutions and charities and would contribute to the Community Rehabilitation Fund. The administration of schools and clinics belonging to religious bodies would be secularized, with current staffs retained and no property confiscated. The Special Rapporteur is of the view that religious communities are clearly eligible for protection under international standards governing freedom of religion and belief. However, these instruments do not cover political activities by religious communities, which are governed by other provisions of international law.

Spain

55. Protestant organizations state that the authorities' closure of several of their local radio stations constitutes discrimination against them, as the Catholic Church allegedly encounters no difficulties in obtaining licences.

Russian Federation

56. A Jehovah's Witness and conscientious objector in the Kursk region was allegedly sentenced to a prison term, a court having ruled that he belonged to a sect and accordingly was not entitled to submit an application on the basis

of his religious belief. Pursuant to the Act of 1997 on Freedom of Religion and Belief, members of communities which did not officially exist in the Russian Federation during the past 15 years are not allowed to proselytize.

Georgia

57. Jehovah's Witnesses were reportedly arrested and convicted in Abkhazia because of their objection to military service. The Armenian, Catholic and Jewish communities are said to be encountering difficulties in obtaining restitution of property confiscated under the former regime.

Ghana

58. The Trokosi ("slaves of God") tradition, according to which families offer their virgin daughters to priests in order to placate the gods for offences committed by relatives, is reportedly being used by the priests to subject girls and women to slavery, including sexual slavery. A bill introducing punishment for following this tradition is reportedly before Parliament.

Greece

59. A German teacher was allegedly prosecuted for making several references to Buddhism in his classes at a private school. Proceedings were also reportedly instituted against a minister of the Greek Evangelical Church of Thessaloniki for not having an "official house of prayer license".

60. Greece replied, in respect of the first allegation, that the German teacher had been acquitted of the charges against him by the Rodopi court of first instance, and, in respect of the second, that the Thessaloniki police department and public prosecutor's office had confirmed that no charges or proceedings had been brought against the Greek Evangelical Church minister.

India

61. With regard to the situation of Christians, members of a Hindu nationalist organization in Uttar Pradesh reportedly launched a campaign of harassment against the Assembly of Church of Believers. In September 1998, four nuns belonging to the Foreign Missionary Sisters in Tamil Nadu were allegedly gang-raped. A number of Catholic and Protestant organizations complain about the growing climate of insecurity for the Christian community; for some, this situation stems from actions orchestrated by Hindu extremists.

62. On the subject of Indian women, a bill reserving seats for women in Parliament and the state assemblies reportedly failed because of opposition from Muslim representatives who justified their stand by arguments about women's place in religion. A Muslim woman who has been elected mayor of Deoband in Uttar Pradesh reportedly lost her mandate as a result of a vote of confidence called for by the representatives of an Islamic seminary. A representative of that seminary called "Dar' al Uloom" reportedly said that the vote of an unveiled Muslim woman ran counter to Islam and that biology, religion and prophecies had proven men to be superior to women.

Indonesia

63. In North Aceh province, in the north of Sumatra, a Muslim religious figure was reportedly arrested for failing to read out the Friday prayer, as required by an agreement concluded between the authorities and the mosque's religious leaders. In February and May 1998, riots were allegedly aimed at non-Muslims (attacks on individuals, places of worship and private property), and especially Christians and Buddhists and girls and women of the Chinese community (rapes, murders, etc.).

64. In an extremely detailed document, Indonesia explained that President B.J. Habibie had expressed, on behalf of the Government and people of Indonesia, his profound regret and had denounced the atrocities committed during the May 1998 riots. He had pointed out that the results of investigations had enabled human rights organizations, including the National Human Rights Commission, to establish that the acts perpetrated essentially against the Chinese community were committed by organized groups. In addition to steps taken to investigate the cases of human rights violations, the Government has taken a series of measures to provide assistance to the victims and forestall any incident (inter alia: creation by the Ministry for Women's Affairs of a forum comprising a psychiatrist's association, a legal aid body and religious and Chinese leaders to formulate recommendations on assistance and prevention to the Government; creation of a task force to protect women from violence; creation of a National Committee for the Prevention of Violence against Women; establishment of investigation teams; the President's promise of better protection for Sino-Indonesians; and incorporation of the National Programme on the Elimination of Violence against Women into the 1998-2003 National Human Rights Plan).

65. Indonesia went on to say that "Although the May riots appeared to be characterized by a phenomenon of racial discrimination and religious intolerance, which targeted mostly non-Muslim Indonesian ethnic Chinese, the long-established Indonesian tradition of mutual respect and dialogue among diverse religious believers, without racial distinction, remains unchanged." The Special Rapporteur takes note of the measures adopted by the new authorities and hopes that they take appropriate steps to ensure that freedom of religion, especially that of minorities, is effectively protected.

Iran

66. An initial urgent appeal concerned the case of three Baha'is, namely, Mr. Ata'ullan Hamid Nasirizadih, Mr. Sirus Dhabihi-Muqaddam and Mr. Hidayat-Kashifi Najafabadi, who were reportedly condemned to death in secret because of their religious beliefs and ran the risk of execution. A second urgent appeal connected with the first alleged that Mr. Sirus Dhabihi-Muqaddam and Mr. Hidayat-Kashifi Najafabadi had been informed by the Mashad prison authorities that their sentence had been upheld. In these two communications, the Special Rapporteur "urgently appealed to the Government of the Islamic Republic of Iran to ensure that the sentences were not carried out and that all judicial remedies and guarantees required by international human rights standards be provided to the above-mentioned persons". A third urgent appeal concerned allegations of the hanging of a

Baha'i, Mr. R. Rawahani, accused of converting a Muslim woman, even though th woman apparently claimed to be a Baha'i. This appeal also referred to a senior member of the Islamic Revolutionary Court, who allegedly described the report of the execution as a lie and stressed that no such sentence had been passed by the Iranian courts. Other communications alleged, firstly, confirmation of the sentencing of two Baha'is, Mr. Jamali' d-Din Hajipur and Mr. Mansur Mihrabi, because of their affiliation to Baha'ism, labelled as a sect and an unlawful organization, and, secondly, the arrests of 32 Baha'is (one of whom was later released), members of the Baha'i Institute of Higher Education, and confiscation of their property. According to another communication, a policy of intolerance and discrimination is applied to the Sunni community (obstacles to construction of places of worship and schools, closure of mosques, executions and murders of Sunni religious and intellectual dignitaries). Lastly, Hojatoleslam Sayyid Moshen Sa'idzadeh, a writer, was reportedly arrested for his writings on Islamic law and women's rights, in which he called for equal rights.

67. In reply to the communication concerning the Sunnis, Iran explained that, under its Constitution, the Government was committed to the protection of the rights of all citizens and that Shiites and Sunnis were equal before the law and enjoyed the same rights and freedoms. The Sunnis were not perceived as being a minority within Iranian society and were in no way subjected to discrimination on account of their faith. The Iranian authorities said that they would cooperate fully with the Special Rapporteur in an inquiry into the cases mentioned in his communication. In reply to the second urgent appeal and, hence, to the first (updated in the second), Iran replied: "Following the rejection by the Supreme Court of the death sentence on Mr. Syrus Zabihi and Mr. Hedayat Kashefi, the defendants, in accordance with due process of law, were retried by another competent court in Mashad. The court found them guilty of charges of acting against national security and sentenced them to death. However, the verdicts are not finalized yet and require further confirmation by the Supreme Court. In addition, should the Supreme Court confirm the verdicts, the defendants can still resort to appeal and/or clemency."

68. The Special Rapporteur deems it important that Iran, heir to a great civilization founded on tolerance, creative intelligence and moderation, subtlety and nuance, should reconsider its attitude to the Baha'i faith, in the interests of freedom of religion or belief, in compliance with its international commitments and teachings to the effect that religion admits of no constraint. Whatever perception certain Iranians may have of the Baha'i question, it is for the State, which is responsible for all its citizens, to focus on constants rather than variables and consider each individual and each minority, as repositories of rights and obligations, to be worthy of respect and attention and to have the right to consideration and protection.

Iraq

69. Two Shiite religious dignitaries, namely, Ayatollah Shaykh Murtadha Al-Burujerdi and Ayatollah Ali al-Gharavi, were reportedly assassinated by government agents.

Kazakhstan

70. Jehovah's Witnesses were reportedly imprisoned for their objection to military service. The authorities, pressured by Muslim representatives, are said to have banned a Christian procession in Petropavlovsk.

Latvia

71. The only synagogue in the capital was allegedly the target of a bomb attack; while the authorities reportedly condemned the act, police investigations have led nowhere.

Malaysia

72. Certain individuals were allegedly arrested for preaching Shiite teachings perceived by the authorities as injurious to national security and the unity of Muslims. A Muslim woman who converted to Christianity was apparently subjected to manifestations of intolerance by her family, Muslim associations and the police, a situation that has forced her into clandestinity.

Maldives

73. Police reportedly arrested nationals and foreigners for their participation in propagating the Christian faith. Subsequently, some of them were allegedly expelled while others were placed in detention. The prisoners were reportedly forced to participate in Islamic prayers and reading of the Koran. The Supreme Council for Islamic Affairs has reportedly enjoined the population not to listen to a Christian radio programme broadcast from the Seychelles. Lastly, the First Secretary of the Maldives High Commission in Sri Lanka reportedly declared in a statement in Colombo that the Maldives was a totally Islamic country and that it was a crime to disseminate the Christian faith.

74. The Maldives replied that any allegation of persecution of Christians was groundless: "Arrests and expulsions are based on breach of laws. Illegal activities, if carried out by foreigners, constitute a violation of terms of their stay, and might entail prosecution or cancellation of their visas. However, nobody has been arrested in the Maldives or expelled from it for professing any particular faith. Nobody is even questioned for professing any religion." According to the authorities, the allegations transmitted by the Special Rapporteur were nothing but malicious propaganda.

Mali

75. An extremist group known as the "Pieds nus" and claiming to belong to Islam reportedly murdered a magistrate who had passed a prison sentence on certain "Pieds nus" who had engaged in acts of violence.

Morocco

76. Christian foreigners were allegedly arrested and heavily fined for failing to declare the entry of 1,200 bibles; apparently the books had previously been checked by the customs, the customs declaration requiring only that weapons, drugs and alcohol be declared.

77. Morocco has emphasized that the sentences passed in this matter were not for proselytism, but were based on the Customs Code.

Mauritania

78. The Penal Code reportedly punishes a Muslim's conversion to another faith with the death penalty.

Mexico

79. Protestant evangelists in Chiapas were reportedly victims of acts of intolerance by Catholics and Indian communities.

80. Mexico's reply was as follows: "The State Human Rights Commission of Chiapas stated that on 8 April 1998 it lodged an official complaint in respect of the acts referred to above. At the same time, in connection with the appearance of Mr. Aldo Santos Jiménez in the Office of the Attorney-General of Teopisca, Chiapas preliminary investigation No. AL65/0026/998 was launched on 1 April 1998 for the crime of robbery and damage to the Church of Christ Fraternity as a result of the acts that occurred in the village of Nuevo León in the municipality of Teopisca, Chiapas. The investigation was completed on 14 April 1998 and that municipality's technical investigation body decided to exercise the public right of action against the following suspects: Ciro Espinosa Lopez, Adán Rodríguez Trejo, Silviano Vásquez Hernández, Olegario Ozuna Vázquez, Juan González Aguilar, Alberto Molina Constantino, Aquilino Vázquez Díaz, Rosendo Gómez López, Emilio Álvarez Ozuna et al.

Myanmar

81. The State reportedly practises a policy of intolerance and discrimination against Muslim religious minorities in the States of Arakan and Karen (destruction of mosques and schools, revocation of citizenship, admission of refugees on the Thai border in exchange for their conversion to Buddhism, refusal of access to health services, education and public jobs) and Christian minorities (destruction of places of worship, conversion of children to Buddhism) in the States of Chin and Karen and the Sagaing Division. Buddhist monks are allegedly also obliged to submit to the control of the authorities.

82. Without providing any explanation, Myanmar has declared the allegations of intolerance and discrimination against religious minorities to be unfounded and entirely false. It would help if Myanmar's reply were supported by suitable evidence, especially since the allegations are founded on concordant and persistent information from a number of reliable sources.

Uzbekistan

83. In the town of Nukus, a pastor responsible for evangelical activities among Muslims was reportedly sentenced to two years' forced labour and internal exile for organizing illegal church services. The authorities allegedly called for the cessation of all Christian activities, including proselytizing outside of churches.

84. Uzbekistan replied that its laws and their enforcement guaranteed freedom of religion and belief. The Ministry of the Interior had no record of the arrest and sentence of a pastor in the town of Nukus. The Special Rapporteur is grateful to the authorities for their assurances of full cooperation in more detailed investigations.

Pakistan

85. A number of Ahmadis were reportedly sentenced to life imprisonment for blasphemy when they were preaching their faith, which some Muslims regarded as an attack on their religious beliefs. Muslim militants allegedly killed Judge Arif Iqbal Bhatti for acquitting Christians charged with blasphemy. Bishop John Joseph reportedly committed suicide to protest the death penalty passed on a Christian accused of blasphemy. Muslim extremists allegedly committed acts of intolerance against the Christian community, at the same time calling for the blasphemy laws to be maintained.

Lao People's Democratic Republic

86. A number of Christians were allegedly arrested at a Bible study meeting. Some were reportedly convicted for creating divisions and undermining the Government, and for receiving funds from abroad. In Huei Say Province a priest was reportedly arrested for preaching his religion without official authorization. In Xiengkhouang a soldier was apparently arrested for converting to Christianity and for his links with the American Presbyterian Church.

87. The Lao People's Democratic Republic has replied that its legislation guaranteed freedom of religion and belief and that the Christian community freely practised its religion and lived in harmony with the Buddhist community. Any act that ran counter to the law was punished regardless of its perpetrator's belief. The authorities declared that they were obliged to take appropriate action against a group of individuals using religion for political ends.

88. The Special Rapporteur wishes to stress that political manipulation of religious matters may not, where it exists, be covered by international standards relating to freedom of religion or belief. Political activities are governed by separate international standards.

Republic of Moldova

89. The law on preaching is allegedly not in conformity with international standards in that it fails to guarantee protection of freedom of religion

for members of religions not officially recognized. Travel abroad by religious figures reportedly requires the authorization of the authorities.

Democratic People's Republic of Korea

90. The authorities reportedly discourage all religious activities apart from those that serve the interests of the State.

Romania

91. The question of the restitution of religious property confiscated under the previous regime was reportedly the cause of conflicts between religious communities, particularly between the Orthodox Church and the Greek Catholic Church.

92. Romania sent a detailed reply on progress made in the matter of freedom of religion, namely: a bill on religions, providing for an inventory of goods and property that previously belonged to churches; preparation of an emergency order for the restitution of 200 properties; amendment of the land laws to include the issue of restitution; a governmental decision establishing alternative service for conscientious objectors, as well as a bill; reorganization of the Secretariat for Religion; creation of a permanent advisory organ composed of representatives of all recognized denominations to advise the Government; progress - despite incidents - in the restitution of property by the Orthodox Church to the Uniate Church.

93. The Special Rapporteur is grateful to Romania for its unfailing attention to his communications and the quality of its replies.

United Kingdom of Great Britain and Northern Ireland

94. The Runnymede Commission on British Muslims and Islamophobia apparently called for an end to all prejudice against Muslims in the media and in the workplace and for State grants to Muslim schools.

95. The United Kingdom of Great Britain and Northern Ireland drew attention to the absence of legislation covering religious discrimination in Great Britain, unlike Northern Ireland. The Government was addressing this issue and "with the agreement of Cabinet colleagues, the Home Secretary has decided that the Home Office will commission research into the nature and extent of religious discrimination in Great Britain". After a period of 18 months, the appropriateness of actions to be undertaken would be decided on the basis of that research. "The Home Secretary responded positively to the report of the Runnymede Commission on British Muslims and Islamophobia. The Government is currently considering the report, which raises a number of wide-ranging issues. Regarding State funding for Muslim schools, under the 1996 Education Act, it is open to independent promoters, including existing independent schools, to seek approval from Government for the establishment of new voluntary-aided schools. All proposals are judged on their individual merits, taking into account educational needs and parental demand." It was also indicated that, in January 1998, the Government had approved State grants for two planned independent Muslim schools in London and Birmingham.

Sudan

96. An urgent appeal was made in connection with the arrest and disappearance of Nasir Hassan, a student at the Bishop Gwynne Theological College in Juba, because of his conversion from Islam to Christianity. Other communications alleged the closure by decree of the Catholic Club of Khartoum despite the protests of the Catholic Church, as well as the arrest in Khartoum of two Catholic priests accused of being linked to explosions, but apparently victims of an attempt to discredit the Catholic Church.

Sri Lanka

97. Catholic, Protestant and Hindu places of worship are reportedly among the main targets of violence.

98. Sri Lanka has explained that its legislation, international commitments under international human rights instruments and policy guaranteed freedom of religion and belief for all. It made particular mention of holidays that coincided with the main religious festivals, Muslims' ability to obtain special leave to participate in Friday prayers, the inclusion of religious teaching in school curricula, the training of teachers for religious instruction and the right of each student to choose to be instructed in the religion of his or her choice. The attacks on Muslim and Buddhist places of worship, including the Temple of the Tooth in Kandy, were committed by the Liberation Tigers of Tamil Elam who were carrying out a campaign of terror.

Turkmenistan

99. Religious and denominational minorities, with the exception of the Russian Orthodox Church, are reportedly the victims of acts of intolerance and discrimination. The country's legislation allegedly does not recognize conscientious objection based on religious belief, and conscientious objectors are sent to prison.

Turkey

100. Religious dignitaries and sites (places of worship, cemeteries) of the Christian communities, and particularly the Greek Catholic Church, are reportedly the target of acts of violence, including bomb attacks (particularly against the Patriarchate); it is also said that a priest was murdered. The police and security services have apparently been unable to identify and arrest those responsible for these acts. Moreover, the authorities have allegedly closed down a Pentecostal church, the Oasis International Christian Fellowship, although it apparently had official authorization. A second communication alleges that in September 1998 the Ministry of the Interior unilaterally appointed "an interim leader for the Armenian Church in Turkey, in an apparent attempt to invalidate the Armenian Church's elected choice of Acting Patriarch. In response, the Patriarchate's religious Council issued a unanimous declaration rejecting the Government's interference in its internal affairs."

101. In response to the first communication, Turkey claimed that some of the incidents described above were linked to thefts and not to acts of religious

intolerance, and that investigations were under way. It also reported that an investigation was being organized into the bomb attack on the Patriarchate. It further stated that no information concerning the closing of the Pentecostal church had been found. Turkey said that the rights of religious minorities were guaranteed by its Constitution and the Lausanne Treaty of Peace. In conclusion, it said: "Therefore, allegations levelled against the Turkish Government in your letter are absolutely unfounded. Acts of crime committed by some, still unidentified, people cannot be attributed to the State. The Turkish Government never tolerates such crimes. On the contrary, all institutions of the Greek Orthodox minority and the Patriarch himself are under the close protection of the Turkish security forces." The Special Rapporteur wishes to point out that his communications are in no way intended as criticism of a State; on the contrary, their purpose is to elicit its views and observations in the interests of dialogue. In the first place, the communication transmitted to Turkey in no way suggested that the authorities were involved in the acts against Christians (with the exception of the allegation concerning the Pentecostal church); secondly, it referred to the fact that the police investigations had been unsuccessful. It is clearly established in international law that the State is responsible for the security of its citizens and, more generally, for all persons living on its territory, even when acts committed against them are allegedly carried out by non-State entities. With regard to the second communication, Turkey explained that the authorities had never intervened in the internal affairs of the Armenian Patriarchate and had not influenced the outcome of the elections.

Ukraine

102. There are reportedly difficulties with the restitution of a Catholic place of worship in Sebastopol confiscated under the previous regime.

Yemen

103. In July 1998 three nuns belonging to Mother Teresa's Missionaries of Charity Order were reportedly killed by a Muslim extremist in the town of Hodeida.

B. Analysis of communications

104. An analysis of the communications from the standpoint of the principles, rights and freedoms enunciated in the 1981 Declaration reveals the following seven categories of violation:

1. Violations of the principle of non-discrimination in matters of religion and belief

105. The characteristics of these violations are as follows: policies, laws and regulations, discriminatory practices and acts against (a) certain communities with regard to religion and belief, particularly when such communities are minorities or do not subscribe to the official religion or recognized religions and beliefs, and (b) against women based on interpretations of religion and on traditions supposedly based on religion or belief.

2. Violations of the principle of tolerance in matters of religion and belief

106. They reveal the following characteristics: policies, practices and acts of religious intolerance on the part of the State and society, particularly of communities in matters pertaining to religion and belief, of politico-religious groups and other non-State groups, the most marked manifestations of which are connected with the problem of religious extremism (inter- and intra-religious). Mention should also be made of the role of the media in propagating a climate of intolerance.

3. Violations of freedom of thought, conscience and religion or belief

107. This type of violation takes the following forms: policies, laws and regulations, practices and acts contrary to the principle of conscientious objection and the freedom to change and keep one's religion and belief.

4. Violations of the freedom to manifest one's religion or belief

108. The fourth category of violations comprises policies, laws and regulations, practices and acts constituting controls, interference, prohibitions and restrictions on freedom to manifest one's religion or belief.

5. Violations of the freedom to dispose of religious property

109. These violations display the following characteristics: policies, practices and acts that impair the freedom to dispose of religious property in the form of non-restitution of confiscated religious property; refusal of access to places of worship (obstacles to, and even banning of, construction or rental; restrictions on the number of followers); attacks against and closure and destruction of places of worship, cemeteries and denominational schools, and confiscation of religious property (including religious works).

6. Violations of physical integrity and health of persons (religious figures and the faithful)

110. The sixth category comprises policies, practices and acts in the form of threats, ill-treatment (including slavery and rape), arrests and detentions, forced disappearances, and even death sentences, executions and killings.

7. Violations affecting women

111. This last category embraces the previous six categories of violations. The most tragic illustration is the Taliban's anti-feminine policy in Afghanistan: it is tantamount to veritable apartheid against women, as women, and on the basis of specious interpretations of Islam. This obscurantism, the product of religious extremism combining religion and politics in the interests of power, excludes women from society and consigns them to a grey area where they enjoy neither citizenship nor rights and where their submission to the all-powerful man in the name of Allah is the order of the day. Such aberrations are also overt in India among communities close to the Talibans, who publicly declare that an unveiled Muslim woman's vote runs

counter to Islam and that women are inferior, according to religion and the prophecies. In Ghana, in accordance with traditions claiming to be based on religion, women are used as slaves, including sex slaves. Lastly, in addition to assassinations, one of the most extreme manifestations and consequences of obscurantism and barbarism against women in the name of religion is rape (in various forms, such as gang rape, forced marriage, etc.) and, in the case of the communications to which this report refers, of nuns, girls and women.

112. These most visible and shocking examples of manipulations and interpretations specifically affecting women must not, however, divert attention from more subtle, less spectacular forms of intolerance and discrimination which are, nevertheless, just as effective in their aim of enslaving women; a case in point is the refusal to adopt affirmative action on behalf of women, especially in the context of parliamentary elections. We should also recall that these discriminatory policies and practices in some cases exclude any possibility of appeal and dialogue, even on the part of men, as is illustrated by a male writer's alleged arrest because in his writings he advocated sexual equality. Generally speaking, it is important to stress that these violations may be committed not only by extremist groups and communities, but more often than not by society (as shown by the alleged pressure exerted on a Muslim woman who had converted to another religion) and official institutions (c.f. communications on the attitude of parliaments to women and their position in public and private life, etc.).

113. Replies were received from the following States after finalization of the report submitted to the Commission on Human Rights at its fifty-fourth session (E/CN.4/1998/6): Austria, Brunei Darussalam, Egypt, Gambia, India and Kuwait (see A/53/279).

114. The Special Rapporteur has still not received replies from the following 27 States to communications dispatched in connection with the report to the Commission at its fifty-fourth session: Afghanistan, Albania, Angola, Azerbaijan, Bosnia-Herzegovina, Comoros, Gabon, Georgia, Iran, Latvia, Mauritania, Mongolia, Mozambique, Myanmar, Nepal, Nicaragua, Nigeria, Pakistan, Portugal, Qatar, Russian Federation, Somalia, Sudan, United Arab Emirates, Uzbekistan, Yemen and Yugoslavia. The Special Rapporteur invites States that have not yet responded to allegations to express their views and comments, and reminds them of the virtue of dialogue. Indeed, he is beginning to wonder whether, by their silence, certain States do not wish to confirm the substance of the allegations made.

V. CONCLUSIONS AND RECOMMENDATIONS

115. Fifty years after the adoption of the Universal Declaration of Human Rights, article 18 of which is the cornerstone of freedom of religion and belief, and despite the adoption of successive international human rights instruments guaranteeing the right to freedom of religion and belief (art. 18 of the International Covenant on Civil and Political Rights, art. 13 of the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief), one cannot help noticing the persistence of manifestations of intolerance and discrimination based on religion or belief in countries at different stages of development and with

different political, social and religious systems. An analysis of communications transmitted since the fifty-fourth session of the Commission on Human Rights and the fifty-third session of the General Assembly reveals the following developments:

(a) A decline in anti-religious State policies and the manipulation of religion in the interest of a political ideology; and yet

(b) The persistence of such policies in several countries, and even the emergence of problems they have brought about, such as those connected with the restitution of confiscated religious property;

(c) An upsurge of State policies directed against minorities in matters of religion and belief, and particularly against unrecognized communities, in other words "sects or new religious movements";

(d) A growing number of policies and practices of intolerance and discrimination on the part of non-State entities. The first category of such entities comprises religious and denominational bodies responsible mainly for inter- and intra-community violations. The representatives of these communities and their followers act against members of their own faith who belong to the same or different branches - examples being the status of women referred to in the seventh category of violations (see paras. 111 and 112) and the status of converts, referred to in the third category of violations (para. 107). These same representatives and believers are also at odds with communities of a different faith. The second category of non-State entities that sometimes overlaps the first comprises politico-religious parties or movements like the Taliban. These two categories raise the issue of the links between politics and the religion and their manipulation, which in this case is a source of intolerance and discrimination, the most extreme form of which is religious extremism;

(e) An increase in the number of policies and practices of intolerance and discrimination against women as such, deriving from interpretations and traditions attributed by men to religion. No religion or belief is safe from this trend, which is apparent in various forms throughout the world.

Major challenges are therefore posed in particular by the proliferation of manifestations of hatred, intolerance and violence based on sectarianism and extremism, and it is no easy task to make a clear distinction between religious conflicts and those of other kinds, particularly political and ethnic.

116. Guarantees of freedom of religion and belief require, in addition to the adoption of international human rights standards and national laws that conform to international law, mechanisms and procedures designed to put them into effect. The Vienna World Conference on Human Rights, in its Declaration and Programme of Action, called upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination

against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. It also invited all States to put into practice the provisions of the 1981 Declaration.

117. The Special Rapporteur has identified a number of factors that are of importance in combating and preventing intolerance and discrimination based on religion or belief. Those factors are both inherent in his mandate as well as external.

A. Internal factors

118. Efforts must be made to increase the financial, human and technical resources allocated to the mandate, gradually to adopt a new methodology of work, and to ensure consistency between the title of Special Rapporteur, his mandate and its implementation.

1. Resources

119. The Special Rapporteur is convinced of the need to boost his mandate, but has come up against a virtually insurmountable barrier, namely, the paucity of resources allocated to his activities, his initiatives and his recommendations as a whole. Being aware of the financial crisis faced by the United Nations and the insignificant share of the regular budget allocated to the Office of the High Commissioner, he has sought voluntary contributions for his activities. In this connection, he wishes to thank the Norwegian Government for its exemplary action in this field which has taken the form not only of financial and political support for the Oslo Conference on Freedom of Religion or Belief, but also of a financial contribution earmarked, as a matter of priority, for activities relating to freedom of religion and belief. Increased funds should provide the Special Rapporteur with the minimum human resources necessary for the effective performance of the normal activities connected with his mandate (communications and *in situ* visits) and the implementation of his recommendations on studies and education (see paras. 6 to 13 above).

120. By and large, it would be desirable for these financial contributions to be used for the development of other informational resources and methodologies for *inter alia* collecting information, monitoring compliance, making available in simplified form for analysis all religious, philosophical and scientific research on freedom of religion or belief. To that end, the creation of an Internet site on the 1981 Declaration would be an extremely promising project meeting all the requirements implicit in the mandate (communications, *in situ* visits, studies and an international compendium of enactments; see paras. 2 to 5 above). As regards sources of information, the Special Rapporteur, while constantly mindful of his sources' authenticity and reliability, is of the view that those in the developing countries should be strengthened in order to assure human rights victims and advocates access to the special procedures; they must not be left behind in matters of accessing information, particularly in the context of modern communication technologies (fax, Internet, etc.).

2. A new methodology

121. These additional resources could also facilitate the adoption of a new approach to the preparation of reports. The Special Rapporteur is of the view that the general report should systematically cover all States and all religions and beliefs; it should contain analyses of each State so that its economic, social, cultural, civil and political context can be taken into account when cases and situations of intolerance and discrimination are being examined. It would also make for reflection on and a better understanding of developments in the field of freedom of religion or belief, as well as the stakes involved in freedom of religion or belief. For example, the record number of communications concerning Iran this year will not have gone unnoticed. Although aware of what still remains to be done, we must acknowledge the strides made by President Khatami's policy, such as progress in women's representation (posts of Vice-President of the State, diplomats, magistrates, police officers, a woman mayor of a district in Tehran, etc.), his statement calling for the non-application of the fatwa against Salman Rushdie, his address to the last session of the General Assembly and support for General Assembly resolution 53/22 "United Nations Year of Dialogue among Civilizations". The Special Rapporteur's communications should therefore be viewed not only from the standpoint of their intrinsic importance, but also in the Iranian context and the stakes involved. The communications concerning Iran may be interpreted either as reflecting its maintenance of a policy of intolerance and discrimination, particularly against the Baha'is, or as revealing a strategy on the part of conservatives to thwart President Khatami's progressive advances, or as both at once. It is therefore of vital importance that a report should be prepared from that angle, using the approach described above.

3. Title and consistency of the mandate

122. The Special Rapporteur reiterates his recommendation that a more neutral and encouraging title, such as "Special Rapporteur on freedom of religion or belief", should be used. The present one, with its reference to religious intolerance, antagonizes certain interlocutors and sometimes makes dialogue difficult. A different title could embrace all aspects of freedom of religion or belief. It must also be consistent with the mandate, covering not only religion but also belief and intolerance, as well as discrimination, and reflect the balanced dialogue-oriented approach followed by the Special Rapporteur in his work, in accordance with the resolutions governing his mandate.

B. External factors

123. With regard to the external factors that can help to combat and prevent intolerance and discrimination, the Special Rapporteur wishes, first of all, to stress that action to promote freedom of religion or belief is inextricably linked to action to promote democracy and development. Extreme poverty, in particular, is likely to render human rights illusory and favour extremism. In other words, these factors cannot be divorced from human rights.

124. Efforts to guarantee freedom of religion or belief imply a prevention strategy. Education can, especially through the schools, inculcate values

based on human rights and give rise to a human rights culture. In the interest of devising a worldwide school strategy for combating intolerance and discrimination based on religion or belief, the Special Rapporteur recommends the organization of an international conference on education on the initiative of States and/or NGOs or even the international coalition advocated and launched by the Oslo Conference.

125. In acknowledging the need to lay the foundations of prevention at the earliest opportunity, the Special Rapporteur deems it a matter of priority to attack the dual scourge of extremism and discrimination against women:

(a) Extremism, whether or not it has a genuinely religious basis, is not limited to any one faith and must be given no quarter. This is why the Special Rapporteur reiterates his recommendation that a "minimum set of standard rules and principles of conduct and behaviour in respect of religious extremism" should be drawn up and adopted by the international community;

(b) Discrimination and intolerance against women, supposedly prescribed by religion or tradition, must be resolutely condemned. To that end, the Special Rapporteur reiterates his recommendation that a seminar should be held on the status of women from the standpoint of religion, traditions and human rights, so as not only to identify manifestations of discrimination and intolerance, but also to formulate practical recommendations and a plan of action for eradicating such practices.

126. The Special Rapporteur advocates the creation of an international coalition around the 1981 Declaration in order to back up his activities and considers that coordination with other institutions directly or indirectly involved in the area of freedom of religion or belief, such as UNESCO, ILO and other organizations like OSCE, is vital.

127. Such projects and ideas imply contributions by all the actors - State and non-governmental alike - in the international community. They are thanked for their very valuable cooperation in the service of the mandate since its inception.

Annex

Follow-up of the missions to Australia and Germany

1. Since 1996, the Special Rapporteur has defined and implemented a visit follow-up procedure. This procedure consists in asking States which have received an *in situ* visit to send their comments and any information on action taken or envisaged by the authorities concerned to implement the recommendations made in the mission reports. It takes the form of "follow-up tables" which are sent to States and refer to the Special Rapporteur's recommendations.

2. Paragraph 21 of this document contains the list of reports submitted since 1996 to the General Assembly and to the Commission on Human Rights, in which follow-up tables and the replies of States appear.

3. On 28 September 1998 a follow-up table was sent to the Australian Government: it reproduced the text of paragraphs 114 to 127 of the report on the visit to Australia (E/CN.4/1998/6/Add.1). On the same day, a follow-up table was sent to the German Government: it reproduced the text of paragraphs 89 to 91, 96 to 98, 101 to 103 and 105 and 106 of the report on the visit to Germany (E/CN.4/1998/6/Add.2).

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CIVIL AND POLITICAL RIGHTS, INCLUDING: FREEDOM OF EXPRESSION

Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18

Addendum

Visit to the United States of America

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Introduction

1. From 22 January to 6 February 1998, the Special Rapporteur on the question of religious intolerance visited the United States of America in the exercise of his mandate. During his mission, he went to Washington (22 January, 24-27 January, 5 and 6 February), Chicago (23 January), New York (27-28 January), Atlanta (29 January), Salt Lake City (30 January), Los Angeles (31 January-1 February) and Arizona (Phoenix and Black Mesa, 2-4 February).

2. The Special Rapporteur had talks with representatives of the State Department (including Thomas R. Pickering, Under-Secretary of State for Political Affairs, John Shattuck, Assistant Secretary for Democracy, Human Rights and Labor, and various other officials) and of its Advisory Committee on Religious Freedom Abroad; he also met officials from the Departments of Justice (including the Hate Crime Task Force and Office of the Legal Counsel), the Interior and Education (Office of Non-Public Education), the Immigration and Naturalization Service and the Equal Employment Opportunity Council. In addition, he had talks with Sandra Day O'Connor and Stephen Breyer, Justices of the Supreme Court, to whom he is particularly grateful.

3. The organization of official meetings presented problems inasmuch as the State Department confined its assistance to meetings held at the federal level, declaring that it was not competent to help with the Special Rapporteur's visits to the states; this highly regrettable lack of cooperation meant that few meetings with official state representatives were arranged. In fact, the meetings with the Governor of Utah, certain administrations, various committees (concerned with such matters as human rights or hate crimes) and legislators came about through the assistance of the New York Office of the United Nations High Commissioner for Human Rights, non-governmental organizations and private individuals.

4. The Special Rapporteur also had consultations with a great number of non-governmental organizations in the field of human rights and with representatives of most religions and beliefs: Native Americans, Christians, Muslims, Jews, Buddhists, Hindus, Jehovah's Witnesses, Seventh-Day Adventists, Mormons, Baha'is, Scientologists, atheists, etc. An essential part was played in the success of this mission by the assistance of non-governmental organizations and private individuals, including in particular: Michael Roan of the NGO Tandem Project in Minneapolis; Craig Mousin of DePaul University in Chicago; John Witte Jr. of Emory University in Atlanta; Cole Durham of Brigham Young University in Utah; Sue Nichols, chairman of the NGO Committee on Freedom of Religion or Belief in New York; Jeremy Gunn of the United States Institute for Peace in Washington; Andrea Carmen of the NGO International Indian Treaty Council; Salam Al-Marayati of the Muslim Public Affairs Council and the Interreligious Council of Southern California in Los Angeles; the International League for Human Rights; the International Religious Liberty Association; and the American Jewish Committee. To all of these the Special Rapporteur would like to express his thanks. His thanks also go to the Office of the United Nations High Commissioner for Human Rights.

5. The Special Rapporteur is unfortunately obliged to draw attention here to the fact that for the first time since he was appointed and embarked on a series of missions (China, Pakistan, Iran, India, Sudan, Greece, Australia, Germany), he came up against a series of obstacles the aim of which was to get his mission put off; he was also the object of various attempts to interfere and take control of his programme and of the activities of the organizations and persons assisting him. What is unacceptable is that these hindrances were the work of international officials of the United Nations, acting, it seems, either on their own initiative or in defence of State interests or certain lobbies. On the subject of these hindrances, a representative of the Permanent Mission of the United States of America to the United Nations Office at Geneva was at pains to tell the Special Rapporteur orally that the United States Government was not in any way responsible for the obstacles and hindrances. The Special Rapporteur greatly hopes that such attempts to undermine the independence of special rapporteurs will not be left without follow-up, particularly within the United Nations, and will not be repeated in the future.

6. As a result of his visit, the Special Rapporteur has been able to draw up a report on the legal situation in the field of religion or belief and a report on tolerance and non-discrimination based on religion or conviction.

I. LEGAL SITUATION IN THE FIELD OF RELIGION OR BELIEF

7. The principal legal texts concerning freedom of religion or belief are, on the one hand, article VI of the Constitution - "... no religious test shall ever be required as a qualification to any office or public trust under the United States" - and, on the other hand, the First Amendment to the Constitution - "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...." The two clauses of the First Amendment - free exercise of religion and "non-establishment" of religion - apply equally to the actions of state and local governments since the Supreme Court has ruled that the Fourteenth Amendment's dictum that no state may deprive any person of liberty without due process of law makes the First Amendment applicable to the states. At the federal level, there is no single law on freedom of religion or belief but a collection of laws ("federal statutes") dealing directly or indirectly with certain aspects of freedom of religion or belief and certain attacks and violations on the part of the State and private individuals and which provide legal protection essentially by the availability of remedies. The Supreme Court, which is the ultimate arbiter of the way in which the American system balances the conflicting rights of its citizens and the Government, has been a major contributor in the construction of the legal framework relating to freedom of religion and belief.

8. The Supreme Court has not tried to define religion itself or to answer the delicate question of what constitutes a religious belief to be legally protected; it has, however, considered that some beliefs may be "so bizarre, so clearly non-religious in motivation, as not to be entitled to protection under the free exercise clause" (Thomas v. Review Board, Indiana Employment Security Div., 450 US 707, 715 (1981)). In identifying such "non-religious beliefs", the Court has focused on the credibility and sincerity of an individual's beliefs rather than on the orthodoxy or popularity of a particular faith. The Court has held that a state could not make membership

in an organized Church, sect or denomination a prerequisite for claiming a religious exemption to an employment insurance statute requirement that claimants be able to work on all days of the week (Frazee v. Illinois Department of Employment Security, 489 US 829 (1989)). An individual's right to believe in non-traditional religions or to be an atheist or agnostic is protected. It should be added that the Internal Revenue Code does not define the term "religious". Internal Revenue Service determination concerning the tax-exempt status of religious organizations does not involve judgement of the merits of a claimed religious belief, but rather looks at whether the asserted religious beliefs of the organization are truly and sincerely held, and whether the practices and rituals associated with the organization's religious belief or creed are legal or contrary to clearly defined public policy.

A. Constitutional and jurisprudential guarantees

9. These guarantees concern, on the one hand, the free exercise of religion and, on the other, the "non-establishment" of religion.

1. Free exercise of religion

10. There follows a brief account of the way the Supreme Court's jurisprudence on the free exercise of religion and the legal restrictions on it has evolved, because of the light it can shed on the subject.

11. The first cases of jurisprudence concerned the Mormons and the practice of polygamy. In Reynolds v. United States, 98 US 145 (1879), the Supreme Court rejected Mr. Reynolds' claim that polygamy was an exercise of his religion and said that the free exercise clause protected his right to believe, but not his right to act on those beliefs. Other cases include Murphy v. Ramsey, 114 US 15 (1885) (concerning a federal statute barring polygamists from voting or serving on juries); Davis v. Beason, 133 US 333 (1890) (territorial legislation requiring prospective voters to swear that they are not polygamists nor a member of any organization encouraging or practising polygamy); The Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States, 136 US 1 (1890) (revocation of the charter of the Mormon Church and confiscation of Church property); Cleveland v. United States, 329 US 14 (1946) (transporting a polygamous wife across state lines violates the Mann Act, which prohibits the transportation of women across state lines for "immoral purposes"). In Wisconsin v. Yoder, 406 US 205 (1972) (exempting Amish children from obligatory school attendance) and Sherbert v. Verner, 374 US 398 (1963) (unemployment compensation may not be denied to a person who refused to make her/himself available for work on Saturday because it was her/his Sabbath), it is suggested that a law which substantially burdens the exercise of religion will be subjected to strict judicial scrutiny and will be upheld only if it is neutral, furthers a compelling State interest, and is the least burdensome means of furthering that interest.

12. In other cases, the Court has upheld certain neutral laws of general applicability without applying strict scrutiny: Jacobson v. Massachusetts, 197 US 11 (1905) (validity of compulsory vaccination laws despite religious prescriptions against medical care); Braunfield v. Brown, 366 US 599 (1961) (no exemption from Sunday closing laws for Orthodox Jewish merchants who

observe Saturday as the Sabbath and are therefore required to be closed two days of the week rather than one). In Employment Division v. Smith, 494 US 972 (1990) (state drug laws may be applied to bar the sacramental ingestion of controlled substances such as peyote), the Supreme Court decided that neutral laws of general applicability do not typically offend the free exercise clause merely because in application they incidentally prohibit the exercise of someone's religion. Government no longer has to demonstrate a compelling interest unless a law is specifically targeted at a religious practice or infringes upon an additional constitutional right.

13. The Religious Freedom Restoration Act of 1993 was enacted by the Congress in order to subject all laws to the strict scrutiny that the Smith case for the most part abandoned. The Act provides that the Government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the Government demonstrates that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

14. In Boerne v. Flores, 117 S Ct 2157 (1997), the Supreme Court declared the Religious Freedom Restoration Act unconstitutional because Congress cannot adopt a standard of protection different from that provided by the Constitution unless there is some proportionality between the injury to be prevented and the means adopted to that end. The Act was also considered as a congressional intrusion into the traditional prerogatives and general authority of the states to regulate the health and welfare of their citizens.

15. During the Special Rapporteur's mission, many representatives of non-governmental organizations, both religious and secular, particularly in the field of human rights, stress the need for legislation along the lines of the Religious Freedom Restoration Act in order to remedy the decision in the Smith case, regarded as a mistaken interpretation by the Supreme Court which is prejudicial to the freedom of religion and belief, particularly for religious minorities. According to these representatives, the decision in the Smith case means that freedom of religion and belief is and may be affected for the following reasons:

(a) In the past, formally neutral, generally applicable laws were used to persecute minorities (in 1925, an Oregon law requiring public education for all children was aimed at closing Catholic private schools; the laws against polygamy led to laws dissolving the Mormon Church and its properties; laws in the years 1930-1950 requiring the Pledge of Allegiance led to violence against Jehovah's Witnesses). As one of the Special Rapporteur's interlocutors noted, "These laws were enacted originally for legitimate reasons, but when they were enforced against religious minorities, they fanned the flames of persecution";

(b) Jurisprudence since the Smith case is prejudicial to religious minorities (see Yang v. Sturner (1990): an autopsy performed on a follower of the Hmong religion, which views autopsies as a mutilation of the body which prevents the release of the spirit, was not a violation of free exercise rights because the statute governing autopsies was generally applicable and formally neutral, thus constitutional; Munn v. Algee (1991), etc.);

(c) A secular bureaucracy may be indifferent towards the needs of religious communities, or indeed ignorant of them;

(d) Legislators may not be aware of the existence and importance of minority groups in the field of religion or belief, so that they do not make any exemptions for them. They may also be influenced by interest groups campaigning for laws without any exemptions for any group in the field of religion or belief, for various reasons (hostility towards religion or certain religious teachings and principles, purely economic interests, etc.).

16. Certain individuals expressed the view that "the biggest problem is the basic pervasiveness of regulations in all aspects of our lives, and in the widespread expectation that everyone will comply with secular norms. Everyone has to comply with the same regulatory rule as everybody else. What the Church is asking for is not religious liberty at all. What the Church is asking for is special privilege".

17. Non-governmental representatives in favour of the decision in the Smith case explained that without that decision, the great variety of religions in the United States would mean that there would be a considerable number of requests for exemptions and the situation would become impracticable.

2. "Non-establishment" of religion

18. The Supreme Court has interpreted the "non-establishment" clause of the First Amendment to prohibit official sponsorship of, support of, or active involvement in religious activity. This clause should promote religious freedom by limiting the influence of federal, state and local governments on religious thought and practice. It recognizes the right of an individual or group to be free from laws and governmental decisions which aid one religion, aid all religions, or prefer one religion over another (Walz v. Tax Commission, 397 US 664 (1970); Everson v. Board of Education, 330 US 1 (1947)). The clause serves to prevent both religious control over Government and political control over religion.

19. In Lemon v. Kutzman, 403 US 602 (1971), the Supreme Court put forth a three-part test for determining whether a law or decision violates the "non-establishment" clause: the statute or decision must have a secular non-religious purpose, the principal or primary effect must be one that neither advances nor inhibits religion, and the statute or decision must not foster an excessive government entanglement with religion.

20. The interpretation of the "non-establishment" clause is often the subject of debate and has undergone a certain evolution, in particular with respect to the following issues:

(a) Direct public aid to parochial schools. This issue involved the opposing responsibilities of Government to allow parents "to ensure the religious and moral education of their children in conformity with their own convictions" while respecting the "non-establishment" clause. It is proposed that Government can authorize the provision of public benefits to parochial and secular schools alike without involving itself in the practices advocated by the parochial schools;

(b) The recognition and practice of religion in State schools, notably school prayer. In Engel v. Vitale, 370 US 421 (1962), Wallace v. Jaffree, 472 US 38 (1985) and Lee v. Weisman, 112 S Ct 2649 (1992), the Supreme Court ruled that Government-sponsored prayer in State schools violates the "non-establishment" clause. The clause protects freedom of religion by preventing schools from telling how, when and what to pray and by allowing students to pray so long as they are not disruptive. Certain groups would like either to amend the Constitution or to have an interpretation that would permit devotional, though non-sectarian, prayers in State schools. President Clinton has declared that the First Amendment did not convert schools into "religion-free zones" and urged schools to allow all students to exercise their right to religious expression, including private and voluntary prayer at school;

(c) Governmental financial assistance that may accrue to the benefit of religious schools. While in the Everson case and Board of Education v. Allen, 392 US 236 (1968) (government provision of free transportation and loans of textbooks to parochial school students) the Court recognized aid "to the students" but not to schools, in other cases, the Court considered that all assistance to children attending parochial schools relieved the schools themselves of some expenses or took a burden off parents and thereby encouraged them to send their children to parochial schools. Thus the "student benefit" test eventually yielded to the "Lemon test" (see paragraph 19). More lenient standards have been applied whereby the governmental assistance may go to an institution of higher education (in Tilton v. Richardson, 403 US 672 (1971), the Court considered it possible, with respect to an institution of higher learning, for the Government to assist the secular facet of the school without appearing to endorse its religious mission).

21. In view of the sensitivity of the question of freedom of religion and belief, and faced with a jurisprudence that, while very rich, is also contradictory and has very different dimensions in similar cases, several NGO representatives expressed the wish that the Supreme Court would develop a coherent and comprehensive framework for interpreting and applying the two constitutional clauses. Justices O'Connor and Breyer of the Supreme Court told the Special Rapporteur that the American legal system proceeded case by case, without necessarily spelling out major principles, and that the jurisprudence in the above-mentioned areas was vague and confused. They added that in a pluralist society containing both believers and non-believers, the principle of the separation of religion and the State was a wise one; similarly, the aim should be to be as generous as possible in relation to the practice of religion as long as it did no one else any harm. With regard to the Supreme Court's jurisprudence, described as "chaotic", many non-governmental representatives stressed the need to remedy a kind of insensitivity towards religious minorities in particular (presumably due, in their view, to a certain secular approach which was indifferent to religion) and towards the principles of freedom of religion or belief as understood in international human rights law (Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, International Covenant on Civil and Political Rights and jurisprudence of the Human Rights Committee). They regretted that international law was often seen to affect America's foreign diplomatic relations, but not its domestic constitutional

law. They also recommended bridging the gaps between the Constitution and statutory protection of religious rights, while calling for the adoption in particular of a law along the lines of the Religious Freedom Restoration Act, which could be validated by the Supreme Court, or of a general law protecting freedom of religion or belief.

B. Federal legislation

22. While there is no federal law dealing with freedom of religion or belief stricto sensu, there is a non-homogeneous body of legislation dealing directly or indirectly with certain expressions of these freedoms and certain violations and infringements affecting them, which provides some kind of protection by guaranteeing remedies.

23. Federal statutes make it a crime for:

(a) A person acting under colour of law to deprive another person of any right protected by the Constitution or laws (United States Code (USC), Title 18, sect. 242);

(b) Two or more persons to conspire to injure or intimidate another person in the free exercise of any such right, or because that person has exercised such a right (ibid., sect. 241);

(c) And for any person, under colour of law, by force or threat of force, to injure, intimidate or interfere with another person because of that person's race, colour, national origin or religion, because that person is attending a State school, applying for employment, or engaged in other such protected activities (ibid., sect. 245);

(d) A person intentionally to deface, damage, or destroy any religious property because of its religious character, or intentionally to obstruct, by force or threat of force, another person's free exercise of religious beliefs (ibid., sect. 247).

24. The Civil Rights Act of 1871 provides a remedy for individuals denied their First Amendment rights or discriminated against on the basis of religion (USC, Title 42, sect. 1983). The Civil Rights Act of 1964 prohibits discrimination on the basis of, inter alia, religion. Title VII bars discrimination in employment practices while an exception is made for religious institutions to allow them to employ persons of a particular religious background if their work is related to the employer's religious activities. Title VII also requires an employer to make "reasonable accommodation" of an employee's religious practices if it is possible to do so without imposing undue hardship on the conduct of business. The Act also enables the Attorney-General of the United States to sue any state school that discriminates against students on the basis of their religion.

25. Over and above the question of the Religious Freedom Restoration Act discussed earlier, and faced with federal legislation which is fragmentary, non-governmental representatives called for the adoption of a general law on the freedom of religion or conviction, which might be based in particular on international human rights law. Such a law would provide a greater guarantee

of protection for minorities in the field of religion or belief, because it would in particular act as a check on the "might is right" principle. It would also be beneficial for the freedom of religion or belief in general, inter alia for the reasons discussed in the specific case of the Religious Freedom Restoration Act. These persons were also surprised that the United States had no such law when the House of Representatives, on 14 May 1998, and the Senate, on 9 October, had adopted a law establishing such protection abroad. Other non-governmental representatives considered that the legal framework was adequate, but that there were problems of constitutional interpretation affecting the freedom of religion or belief, as illustrated by the Smith case.

26. The State Department representatives considered that the First Amendment to the Constitution was a sufficient guarantee and preferable to general legislation, which could only be the result of a compromise in the Congress, where, moreover, minorities were by definition in a weak position. They explained that the First Amendment constituted the general and principal legal framework and that, under the Constitution, the Congress could not adopt a law on religion, despite the existence of specific laws, which had however been vetted by the Supreme Court in relation to the relevant constitutional principles. It was also stressed that while the wording of the First Amendment was general and might raise queries within a specific political context, the United States' political system of separation of powers meant there could be no doubt about the matter. Apart from the protective legal framework offered by the Constitution, any violation in the field of religion or belief was punishable under the criminal law. It was therefore considered that any revision of the First Amendment would be pointless, but would on the contrary be liable to weaken it. According to the Under-Secretary of State, while the system of separation of religion and the State under the Constitution was not perfect, it was preferable to have a fight between freedoms rather than a fight over freedom.

C. Other matters

27. Many persons deplored the failure of the United States to ratify the Convention on the Rights of the Child, which includes provisions on freedom of religion or belief. We may note that 191 States have ratified this Convention, but that they do not include Somalia and the United States of America. This situation has been interpreted as a manifestation of isolationism and rejection of other people, and also as an attitude revealing a fear on the part of certain religious communities that if children were granted too many rights, those rights might subsequently be used against the parents.

28. In general, it appears that international human rights law, including treaties ratified by the United States, is seen as belonging solely to foreign affairs and not to domestic affairs and that domestic law de facto takes precedence over international law. As one academic said: "It partly reflects the American sense of superiority on human rights issues. Congress thinks we do just fine on religious liberty issues, and the rest of the world should not be telling us how to get it right."

II. TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Religions and beliefs: the present picture

29. The Special Rapporteur was unable to obtain official statistics for religions and beliefs because, as the State Department representatives explained, the authorities do not compile such statistics, in accordance with the principle of the separation of religion and the State. He therefore had to turn to various non-official sources, such as the World Almanac (1997) (see annex) and Harvard University's Pluralism Project.

30. The study entitled "The Religious Landscape of the United States", which is to be found in the March 1997 issue of US Society and Values, the electronic review of the United States Information Agency, contains an analysis of the Pluralism Project which yields the following figures:

(a) 163 million Americans (63 per cent) identify themselves as affiliated with a specific religious denomination;

(b) Roman Catholicism is the single largest religious denomination with some 60 million adherents;

(c) American Protestant Churches have a total of some 94 million members of some 220 individual denominations. The Universal Almanac 1997 groups the denominations into 26 major families with memberships of 100,000 or more, but also notes that there are thousands of self-identified groups of believers;

(d) There are more than 300,000 local congregations in the United States;

(e) There are more than 530,000 members of the clergy;

(f) Some 3.8 million people identify themselves as Jews, with an additional 2 million defining themselves as primarily culturally or ethnically Jewish;

(g) There are an estimated 3.5-3.8 million Muslims; Islam is the fastest growing religion in the United States;

(h) In terms of personal religious identification, the most rapidly growing group in the United States is atheists/agnostics (currently about 8 million).

31. It is noteworthy that these sources of information make no mention of the traditional beliefs of Native Americans (manifested in particular by their sacred tie to the earth), as distinct from the affiliation of part of this group with the Christian religion. According to Freedom of Religion and Belief: World Report by J. Sheen and K. Boyle (ed.) (June 1997), 47,000 Americans profess to belong to an indigenous American religious faith; approximately 46 per cent of Native Americans are Protestants and 21 per cent are Roman Catholics. Also not included are very small minorities in the domain of religion or belief.

32. It is evident from these figures that the United States of America, which is characterized by an extraordinary religious diversity, offers a mosaic of the world's religions and beliefs. While we find a predominantly European and Judaeo-Christian heritage, which is the historical product of immigration, the multiplicity of denominations in the majority Christian religion and of minorities in the field of religions and beliefs can nevertheless lead to the view that all denominations are minorities. M J. Gunn, an expert on religious freedom, puts it like this: "No denomination has ever constituted a majority in the United States as a whole. In this sense all denominations are minorities in the United States.".

33. Before going on to consider these "minority" communities, the Special Rapporteur considers that the situation of the majority Catholic and Protestant religions (each being treated here as a monolithic entity, and not in terms of the different trends and communities it may comprise, as considered later in the context of minorities) is satisfactory, apart from some exceptions described below for the minorities, but that they may be practised with less intensity because of their majority position (see for example hate crimes, the Supreme Court decision in the Smith case, the separation between religion and the State, the conflict between the religiously intense and religiously unintense. See also paragraph 49 below in fine).

B. Situation of minority communities in the field of religion or belief

1. Situation of Muslims

34. Within the Muslim community, which is characterized by its ethnic and cultural diversity, there are two main trends: on the one hand, the Afro-Americans who between the end of the nineteenth century and the middle of the twentieth century gradually established the Black Muslim community, rejecting a past of slavery associated with forced conversion to Christianity and reconstructing an identity around Islam, which they think of as their original religion; secondly, the "oriental" Muslim community originally established by Lebanese and Syrian immigrants at the end of the nineteenth century and enriched by newcomers from Pakistan, Bangladesh, India and the Middle East from the 1960s onwards. For the last 20 years or so, Islam has been going from strength to strength in the United States, mainly as a result of immigration.

35. Most of the Muslim representatives stressed that their community's situation in the religious sphere was satisfactory compared with that of Muslim minorities in other countries, and even with the position of Muslims living in countries where Islam was the majority religion. They emphasized in particular the freedom that prevailed in general with regard to religious activities, including the practice of worship and religious traditions, the management of religious institutions' affairs and the construction of buildings for religious communities. According to the information received, Muslims have 1,250 mosques and Islamic centres, half of which have been built since 1984. There are also about 100 weekday schools, 1,000 weekend schools and about 1,200 community organizations. Inter-denominational dialogue is also encouraged and developed. Recently, with a view to remedying problems of

communication between religious leaders from abroad and young Muslims who are Americanized, the International Institute of Islamic Thought has introduced a programme of instruction in religious doctrine leading to an MA in Imamate Studies; the Institute is also preparing an MA in Islamic Studies.

36. However, despite a general and comparative situation that is positive, the situation of Muslims within the national religious mosaic is problematic. The Muslim representatives said that they felt that there was both latently and openly a form of islamophobia and racial and religious intolerance in American society. It emerges very clearly that an essential factor in that situation is the particularly harmful role played by the media in general and the popular press in particular, which purvey a stereotyped and distorted message of hatred, treating Muslims as equivalent to extremists and terrorists, as can be seen from the media treatment of the episode when United States diplomats were taken hostage during the Iranian revolution, the explosion at the World Trade Center in New York, the Gulf War, and even the Oklahoma City bombing, which was immediately attributed to Muslims, etc. The media also concentrate their reporting almost exclusively on the often controversial group known as the "Nation of Islam" (see also paragraph 39 below).

37. Such behaviour by the media is very disturbing: these powerful means of communication have a decisive effect on the formation of American public opinion, and hence American society; some of those spoken to did not hesitate to assert that United States policy was decided, among other things, by the position in the media. The result is that most Americans are not only kept in a state of basic ignorance about Islam and Muslims, but are also insidiously and involuntarily conditioned by the media through negative representations of this community. It is therefore not surprising to find the following manifestations - direct or indirect, intentional or unintentional - of intolerance and discrimination, both racial and religious:

(a) Acts of vandalism against mosques and Muslims' private property, verbal and physical attacks, discrimination in the field of employment, particularly as regards respect for religious practices, and above all against women wearing "Islamic" dress (the hijab), isolated acts of intolerance by public employees, such as the teacher in South Carolina who called on people to "kill Muslims". The 1996/97 report on hate crimes and discrimination against Arab Americans prepared by the American-Arab Anti-Discrimination Committee (ADC) includes 22 instances of hate crime, 55 cases of discrimination in the workplace and 22 cases of discrimination by local or federal government agencies; these cases are merely a sample of the types of discrimination complaints received by the ADC and do not reflect the actual number of complaints received;

(b) A security system used by American airline companies uses a "terrorist profile" that is seen to be discriminatory and humiliating to Arabs and Muslims (the above-mentioned ADC report includes 30 cases of harassment at airports selected from among hundreds of complaints);

(c) The Anti-Terrorism and Effective Death Penalty Act of 1996 allows the deportation of non-citizens on the grounds of suspicion of links to organizations abroad which the United States designates as "terrorist", and

the Illegal Immigration Reform and Immigrant Responsibility Act provides for punishments for minor violations of visa status and makes it more difficult to secure political asylum. Both Acts allow the use of secret evidence in administrative and judicial proceedings without any opportunity for defence lawyers to refute the evidence. It is believed that Arabs and Muslims, often associated with terrorists, would be most likely to be affected by this legislation.

38. These manifestations are not, of course, due to any anti-Muslim policy on the part of the United States authorities and are not the general rule for Muslims. They are in fact manifestations which are marginal - in society, on the part of citizens, but also of officials acting on their own initiative and of private corporations - but which nevertheless really affect a part of the Muslim population. The intensity of these manifestations varies in the light of international events such as those mentioned above. We may also note the importance of the ignorance factor, which results in any Arab being identified with the Muslim religion and hence with terrorism. The effect of this factor is certainly exacerbated by the influence of the media and certain groups hostile to Islam.

39. The Special Rapporteur would like to refer here to the particular role played by the Afro-American organization "Nation of Islam". During the mission, this organization was described by both Muslim and Jewish representatives as an extremist group in the American Muslim community and as a source of intolerance purveying messages of hatred for whites, Catholics, Jews, Arabs, women, homosexuals, etc. They consider that this group causes difficulties for the integration of Muslims into American society and for Islam and its representation in the eyes of American public opinion. The representatives of the Nation of Islam, for their part, declared that their aim was to put an end to the American oppression of Muslims that has existed since the days of slavery and kept them in a state of destitution. They stressed their positive role with regard to education and advancement within the Afro-American population and referred to the Million-Man March on Washington in 1995. They rejected the accusations made against their organization and its leader, Louis Farrakhan, in particular by the media with a negative attitude to Islam. Their organization was not anti-Semitic, since Judaism was a revealed religion in Islam, but it had political differences with certain Jewish organizations on the subject of Israel and the Palestinians. They added that they suffered oppression from certain Jewish organizations and the media, although the Nation of Islam was training up the best American citizens and was not violent. Finally, they urged the need for a dialogue with the Jewish community.

40. The Special Rapporteur wishes in conclusion to refer to the positive action taken on behalf of the Muslim community by some authorities and non-State entities. At the official level, several initiatives directly or indirectly in favour of Muslims deserve to be reported. President Clinton's greetings on the occasion of Ramadan and Mrs. Clinton's invitation of Muslims to the White House for an Iftar dinner (celebrating the end of Ramadan) are gestures of recognition for and communion with the Muslim community and send messages to American society. The White House conference on hate crimes in November 1997, which was attended by the Secretary for Education and the Attorney-General among others and by representatives of non-governmental hum

rights organizations and of the religions, was an opportunity to develop strategies for preventing intolerance and discrimination based on religion (we may mention among other things the publication entitled "Preventing Youth Hate Crime: A Manual for Schools and Communities"). In the field of prevention, the role and activities of the Commission on Human Relations and Hate Crimes, such as programmes for increasing the awareness of children, parents and teachers, are essential. Finally, in society, the Special Rapporteur was very conscious of the role of the interdenominational dialogue and its impact, such as the interdenominational prayers during the Gulf war. He also wishes to stress the exemplary performance of the Interreligious Council of Southern California, which, through its various intercommunity and interdenominational activities and its many initiatives in society and with the different parties involved - public, political and media - is trying to promote mutual understanding and dialogue and to prevent intolerance and discrimination.

2. Situation of Jews

41. The Jewish community is characterized by its diversity. It includes, on the one hand, people who identity with it on a religious or cultural or ethnic basis and, on the other, the three main branches of Judaism in the United States - orthodox, conservative and "reform". Although it only accounts for 3 per cent of the population of the United States (having been present throughout the country's history, but with substantial European immigration at the end of the nineteenth and beginning of the twentieth century), in terms of numbers it represents the greatest Jewish presence in the world, and is even larger than the Jewish community in Israel. This is a religion and a community which have made an essential contribution to the different spheres of American life.

42. Representatives of the Jewish community have stated that they have benefited from a privileged - indeed unique - situation in the United States, due in particular to a degree of religious liberty which is without equal in the world. They attributed this situation to the constitutional protections ("non-establishment" and free-exercise clauses) which were also responsible for the "thriving religious life within the Jewish community". It should be noted that while there is strong support and appreciation for the constitutional provisions, there is a diversity of opinion within the Jewish community as to what the "non-establishment" clause requires. It was also pointed out that American Jews suffered from prejudice, discrimination and intolerance until the 1950s but since then the protection of Jews has improved significantly.

43. Exceptions, however, exist. It was noted that in the Attorney-General's January 1998 report on hate crimes statistics in the United States, of 8,734 crimes classified as "hate crimes" reported to the Federal Bureau of Investigation, 1,400 were "religion-motivated". Of those more than 1,100, nearly 80 per cent, were anti-Jewish. It was pointed out that while these incidents demonstrate that there are some individuals who continue to manifest intolerance against Jews (most often manifested in crimes against their property, cemeteries, etc.), the statistics also reveal the heightened awareness of these incidents by citizens and law enforcement agencies and the extent to which the Federal Government, by requiring local and state agencies to report such crimes, has exercised leadership in helping to eliminate such

acts. Jewish representatives also suggested that the methods developed by Jewish organizations to monitor and report such incidents to local and state authorities serve as a model for other groups and communities facing discrimination, both in the United States and abroad.

44. They also drew attention to the Smith case and said that since the 1990 ruling, the Government in most cases is no longer required to demonstrate a compelling reason for restricting religious exercise. This has led to efforts to adopt the Religious Freedom Restoration Act, which the Supreme Court declared unconstitutional and which is being revised and reviewed by a very broad coalition of religious and faith communities. A related initiative, the Religious Freedom in the Workplace Bill, proposed in the Congress, would address the obligations of individual employers to accommodate religious practice in the workplace more adequately. One Jewish representative noted that the Clinton Administration had announced guidelines to protect religious freedom in the federal workplace and that it supported passage of the Religious Freedom in the Workplace Bill to ensure the same protection in the private sector. It was noted that the focus of the Bill is not on religious discrimination, but rather on the question of how to provide more accommodation to religious obligations of employees in the private sector, including, for example, observance of the Sabbath and other holy days, the right to wear required religious garb, etc. At issue has been the fact that the courts have interpreted narrowly the provision that employers must reasonably accommodate their employees as long as that accommodation does not present undue hardship. A representative of the Justice Department confirmed to the Special Rapporteur that this was the legal situation, while representatives of the Commission on Equal Opportunity in Employment said that a large number of complaints in this area came from the Jewish community, which was more aware of its rights.

45. In addition to this situation, considered very satisfactory by the Jewish community, Jewish representatives stressed very strongly the primary role of the constitutional provisions as well as the numerous remedies available under existing local, state and federal laws. They also noted that the Jewish community had played a pioneering role in American society in initiating interreligious dialogue such as the Catholic/Jewish Educational Enrichment Programme which sends rabbis into 30 Catholic high schools to teach about Judaism, anti-Semitism and the Holocaust, and which sends a Catholic professor to teach about Catholicism and the Catholic community in Jewish day schools. Similarly, there are interfaith dialogues and ongoing programmes with, inter alia, Protestant denominations, as well as an ongoing Jewish-Muslim dialogue, on the national and local levels. The Special Rapporteur was, however, informed by a representative of the Jewish community in Chicago that dialogue with the Nation of Islam was refused so as not to give legitimacy to "religious fanatics". The Special Rapporteur was also informed about a request - which was refused - by ultra-Orthodox Jews at Yale University to have separate toilets.

3. Other communities in the field of religion or belief

46. In general, it appears that the situation of minority communities in the field of religion and belief is satisfactory. Asian religions, such as Buddhism and Hinduism, are integrated into American society and are even

gaining ground among the non-Asian population. "Marginal" religions such as the Jehovah's Witnesses, the Mormons, the Seventh Day Adventists and the Assemblies of God, are also accepted in the society, no doubt because some minorities which in the past suffered from intolerance and discrimination have with time become figures in the landscape of religion and belief which the public have got used to and familiar with. As far as Scientology, on the one hand, and atheism, on the other, are concerned, the situation also appears to be satisfactory.

47. If the situation as a whole is thus good, there are still difficulties in some places and at some levels, difficulties which can be interpreted in different ways. The Special Rapporteur proposes to examine them below, but making a distinction between the group of minority communities and marginal religions, on the one hand, and Scientology and atheism, on the other.

48. The difficulties most often mentioned concern discrimination at the workplace (such as dismissals, non-respect for religious practices - especially in the case of Seventh-Day Adventists - and problems connected with so-called "religious" dress - especially in the case of Sikhs). They also concern places of worship, particularly as regards obtaining permits for building, renovation and use for different purposes (particularly in the case of Buddhists, Hindus, Jehovah's Witnesses, Hare Krishna, Mormons outside Utah, etc.), and even isolated attacks on religious buildings.

49. As far as permits for places of worship are concerned, one of the main factors emphasized by the representatives of these communities is the Supreme Court's decision in the Smith case, which affects above all communities in a minority position. For example, it seems that because of zoning regulations, the authorities have discretion in taking decisions, and it would be difficult to identify religious or non-religious reasons as the grounds for any particular refusal. This situation is said to be prejudicial for the communities, the Smith case having established that for neutral laws of general applicability, the authorities are no longer obliged to demonstrate a compelling interest unless the law is specifically targeted at a religious practice. This situation was confirmed by the justices of the Supreme Court consulted by the Special Rapporteur. According to Douglas Laycock, a professor at the University of Texas Law School, who based his view on a 1993 survey which concluded, first, that 43 per cent of Americans said they had a very negative or negative opinion of "fundamentalists" (a term which was not defined) and, secondly, that 80 per cent of them had negative opinions about sects or minority cults, there is a sort of low-level hostility and insensitivity in society (manifesting itself in particular in the difficulties regarding employment and places of worship mentioned above), also on the part of officials in their capacity as simple citizens with regard to certain minorities who might be regarded as fundamentalists, sects or minority cults. Because of the highly decentralized nature of the United States federal system, isolated pockets of intolerance can be found among officials acting on their own initiative. But in general, according to Douglas Laycock, it is found that there are hundreds of different isolated conflicts between secular norms, governmental regulations and religious views and practices that from the dominant secular standpoint seem idiosyncratic. These difficulties can be interpreted as being the result of a sort of secularism which has pervaded the legislation and which is characteristic of an elite who are for the most part

non-believers and indifferent to religious matters or who consider that the communities' demands are for privileges rather than for rights. Still according to Laycock, in the United States "the conflict is between the religiously intense and the religiously unintense". We may note, moreover, that for most minorities, to remedy this situation, and in particular to resolve specific problems such as refusals relating to places of worship, would take a great deal of time and money.

50. Concerning Scientology, its representatives declared that their organization had been recognized as a religion in the United States since 1993 and that it had 42 churches with 3 million members. As regards the information collected by the Special Rapporteur during his visit on the existence of forced labour camps - the "Rehabilitation programme" - and Scientology's harassment of its former members and its critics, even including killings, the representatives of the organization firmly rejected those accusations and sent the Special Rapporteur a detailed dossier in which they explained that: (a) the Rehabilitation Programme was a voluntary religious retreat emphasizing intensive contemplation and concentrated religious studies, balanced by a certain form of physical labour, and that it was not "brainwashing"; (b) Scientology's ethical code prohibited illegal activities, and hence the organization's detractors were not the object of harassment, but of legal proceedings; (c) the deaths of certain Scientologists in Florida were accidental.

51. As far as atheism is concerned, it is a movement which, for the time being, is developing and organizing among the population on a modest scale, generally because of its non-acceptance by the society, in which religion remains a very strong point of reference in social, cultural and identity terms. However, some organizations, such as the Free Thought Society of Greater Philadelphia and the Anti-discrimination Support Network play an active role aimed in particular at securing genuine recognition for atheism and respect for the rights such recognition would entail. Apart from contesting State-supported religious symbols, which to a degree are imposed on everyone, such as the mottos "In God We Trust" on United States currency and "One Nation Under God" in the Declaration of Allegiance to the national flag, and various oaths which include a reference to God, these organizations complain about discriminatory situations and bring court proceedings with regard to them, in particular the obligation to sign an oath to God in order to join the Boy Scouts of America.

C. Situation of Native Americans

52. The situation of the Native Americans was discussed in depth with officials, including the Assistant Secretary of the Interior for Indian Affairs, representatives of the Native Americans and non-governmental organizations and various personalities.

53. The Native Americans are without any doubt the community facing the most problematical situation, one inherited from a past of denial of their religious identity, in particular through a policy of assimilation, which most Native Americans insist on calling genocide (physical liquidation, religious conversion, attempts to destroy their traditional way of life, laying waste of land, etc.).

54. It was explained to the Special Rapporteur that it must be clearly understood that the continuation and preservation of traditional Native American religion is ensured only through the performance of ceremonies and rites by tribal members. These ceremonies and rites are often performed at specific sites which are often established by creation myths and other events of importance in the native community. These sites may also be based on special geographic features such as burial sites, areas where sacred plants or other natural materials are available, and structures, carvings or paintings of religious significance. For most Native American religions, there may be no alternative places of worship since these ceremonies must be performed at certain places and times to be effective.

55. Concerning the situation of Native Americans in the religious domain, regulations restricting traditional ceremonies, including dances, lasted until 1934 when the Indian Reorganization Act was adopted. In 1978 Congress adopted the American Indian Religious Freedom Act (AIRFA) which stipulates, in particular, that: "It shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions ... including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites". In 1990 came the Native American Graves Protection and Repatriation Act to ensure that Native American remains and sacred objects retained by federal, state and local governments, as well as universities and museums, are returned to the appropriate tribes and/or descendants and that burial sites on tribal and federal lands are properly protected. Finally, in 1996, President Clinton issued the Executive Order on Indian Sacred Sites calling for the protection of sites considered sacred by tribes and directing federal agencies to provide Native American traditional practitioners access to those sites.

56. With respect to the jurisprudence of the Supreme Court, in Lying v. Northwest Indian Cemetery Protective Association (1988) the Court declared that AIRFA was only a "policy statement". Although the Court recognized that the Government did not have a "compelling interest" in constructing a road on sacred land, as there existed alternatives, and although the project implied the annihilation of religious practices, the First Amendment did not provide the relief sought. Consequently, there are no enforceable safeguards for worship at sacred sites. The Smith case and the failure of the Religious Freedom Restoration Act (see chapter I, section A) also directly affected the religious practices of Native Americans.

57. On the basis of that brief legal background, the representatives of Native Americans and non-governmental organizations explained that the legislation concerned with the recognition and protection of Native American religious practices suffered from many weaknesses and gaps, which limited or even prevented its application.

58. Concerning the Executive Order in particular, it was stated that while it was very positive for tribes, the Order had no "action clause", leaving tribes without the needed legal "teeth", and that a stronger commitment to effective tribal consultation and higher standards for the protection of sacred sites were needed.

59. Concerning the Native American Graves Protection and Repatriation Act, representatives of Native American and non-governmental organizations expressed concern that the Act was too limited and failed to resolve, inter alia, the repatriation conflict between the scientific community and tribal governments. Concerns were also expressed on the following issues:

(a) On 24 October 1997, the Advisory Council on Historic Preservation approved regulations that place tribes in a secondary role, in regard to section 106 of the National Historic Preservation Act (16 USC 470), when a tribal sacred site is located off tribal lands;

(b) On 7 January 1997, a bill (HR 193) was introduced to prohibit sites of traditional significance from being listed in the National Register of Historic Places. This bill would have a significant impact on Native American historic and sacred sites and would result in increased damage to these sites, further infringing on the capacity of Native Americans to practise their religion within the bounds of existing law;

(c) In April 1994, President Clinton issued an Executive Memorandum on Native American Access to Eagle Feathers, directing the Department of the Interior to take the necessary actions to ensure priority distribution of eagles, a protected species, to Native Americans for traditional religious purposes. The memorandum simplifies the eagle permit application, minimizes delays, involves tribes in the distribution process, reviews methods for storage, etc. While the Federal Government has increased its efforts to improve its eagle distribution process, many concerns remain, in particular conflicts between religious needs and federal directives and laws such as the Endangered Species Act and the Eagle Protection Act; the waiting period involved in the acquisition of an eagle through the federal repository; and the condition of the eagle once it is received by the religious practitioner;

(d) There is a pressing need for federal protection of the religious rights of Native Americans incarcerated in federal, state and local penal and other institutions.

60. In general, the charge is often made that legislation derived from a western legal system is incapable of comprehending Native American values and traditions. Native Americans are being asked to "prove their religion", and in particular the religious significance of sites, most of which are situated on land belonging to the federal, state or local Governments and some on private land; but the need to provide "proof" conflicts with certain values, because the sacred site has to remain secret; furthermore, to reveal its location would allow the authorities to interfere in matters of religion. Similarly, the definition of property is based on the western concept of individual rights, whereas for Native Americans property is collective. The jurisprudence of the Supreme Court is also seen as showing a lack of understanding of Native American values. According to the Native American representatives, there is thus a double standard: because the Native Americans' system of values is not recognized, their religious practices are less well protected than those of other religions. These legal shortcomings and weaknesses associated with the Supreme Court's jurisprudence make it easier to neutralize the legislation on religious matters analysed above. Furthermore, the adoption of neutral laws of general applicability enables

economic projects to be undertaken on sacred sites, which is tantamount to profaning them or destroying them. It was underlined that conflicts concerning the use and protection of sacred sites between traditional Native American religious practitioners, developers and land managers were likely to continue to affect Native Americans unless clear guidelines for protection were established and enforced. Similarly, legislation to protect animals or prohibit the use of certain plants may affect Native American religious practices, such as those requiring the use of eagles' feathers or the consumption of the peyotl cactus. Finally, the Special Rapporteur was informed that court decisions in Native Americans' favour on the ownership of sacred sites had not led to their restitution, but to financial compensation, which, for example, the Sioux nation was refusing in the case of the Black Hills of South Dakota, which it was deprived of illegally according to a Supreme Court decision in 1980.

61. Apart from these problems of a legal nature, the representatives of the Native Americans and non-governmental organizations reported very many cases of what they called intolerance and discrimination in the field of religion, which, in fact, resulted from these legal problems.

62. A first series of complaints relates to sacred sites and sacred natural objects used in rituals (plants, rice, etc.). They involve first of all damage to sites due to the execution or attempted execution of economic projects (for example, mining projects affecting the sacred sites in the Little Rocky Mountains of the Gros Ventre and Assiniboine tribes on the Native American reserve of Fort Belknap in the Northern Montanales (Montana) and the sites near Lake Rice in the Sokaogon Chippewa reserve in northern Wisconsin; a plan to build a road in a national park affecting a sacred site of the Pueblo Indians near Albuquerque (New Mexico); a uranium mining project affecting the sacred site of the Havasupai tribe in the Grand Canyon (Arizona); economic development projects at the Mount Shasta sacred site of the Shasta, Pit River, Wintu, Karuk, Okwanuchu and Modoc tribes and at the Medicine Lake Caldera sacred site of the Pit River, Shasta and Klamath/Modoc tribes in California; a nuclear project on the Ward Valley sacred site of the Fort Mojave tribe in California). Then there is the problem of access to religious places and sacred features situated on private property (for example, a request for compulsory authorization for Native Americans to practise their religion on the Mount Graham sacred site situated near the University of Arizona's telescopes), on Native Americans' own property (case mentioned above of the Sioux nation having been unable to recover their property in the Black Hills and being denied the exclusive use of their sacred site for religious ceremonies), or situated on the frontier with Mexico (for example, case of the Yaki nation and the Tohono O'odham). In general, these complaints reflect both a real lack of understanding and consideration and an indifference and even hostility on the part of the various officials and other parties involved (in the economy, research, etc.) with regard to the values and beliefs of the original inhabitants of the United States.

63. The Special Rapporteur wishes to draw attention here to two situations which have already been the subject of a communication addressed to the United States authorities, in June 1997. First of all, there is the case of Mount Graham, where telescopes are being constructed by the University of Arizona on the sacred site of the Apache nation with the authorization of the

federal water and forest service. The other case concerns the complex and sensitive situation resulting from the Relocation Act (25 USC) following a land dispute between two Native American tribes, the Navajos and the Hopis; in connection with the resettlement of families from these two tribes in the Black Mesa region of Arizona, the Navajos consider that their right of access to their sacred sites in the area allocated to the Hopis is not respected; the Hopis for their part consider that their religion and its practices should also be respected (for further details, see the report entitled "Hopi-Navajo relocations", prepared by Erica-Irene A. Daes and John Carey - E/CN.4/Sub.2/1989/35, parts I and II).

64. A second series of complaints relates to ceremonial instruments and objects (eagles' feathers, tobacco, cactus, peyotl, etc.). Persons having them in their possession sometimes run into serious difficulties, including confiscation, especially at frontiers, arrest and prosecution, for the reasons given in the section on legal issues (see in particular the Smith case). A third series of complaints concerns the restitution and non-profanation of human remains, particularly on the part of the scientific community, a problem mentioned in that same section.

65. A fourth category of complaint concerns Native American prisoners (some 7,000) in the United States prison system, both State and federal. Sweat lodges (for cleansing and purification ceremonies), long hair worn in a traditional fashion, headbands, medicine bags, possession of sage, cedar and tobacco and other practices have been banned as "security risks" by one prison or another. Concerning the question of cutting the hair of Native American prisoners, many individuals asserted that this act was tantamount to castration. According to the information received, enforcement of and compliance with laws and regulations have not been uniform and lawsuits filed to enforce existing laws have resulted in contradictory decisions. The freedom of religion of Native American prisoners has depended upon the whim of individual prison officials. Lawsuits are pending and complaints have been filed against the Departments of Correction of Texas, California, New York, Wisconsin, Minnesota, Nevada, Missouri, Washington, Oregon, Pennsylvania and Arizona.

66. Finally, a fifth category of complaints concerns children asked in certain schools to cut their hair. Children placed in non-Native American adoptive families and institutions are also a problem, because their links with traditional Native American religion are broken.

67. During official consultations, State department representatives said that there were many problems relating to Native Americans. However, while recognizing the existence of very serious abuses in the past, they emphasized that recent years had been marked by progress towards greater protection and autonomy for indigenous peoples. They also explained that the process was a long-term one.

68. Officials from the Departments of Justice and the Interior described past United States policy as destructive towards Native Americans and biased in favour of the country's economic interests. According to them, President Clinton's policy, on the contrary, took account of Native Americans' interests. They stressed nonetheless the difficulties caused by the conflict

between economic values involving vast financial interests and the importance of the concept of private property, on the one hand, and Native Americans' traditional values, on the other. It will be noted that the Native Americans are a small religious minority in a democracy shaped by the will of the majority (we may cite, for example, the case of 500 persons claiming protection for their sacred site in the face of a project for the construction of ski runs which is of interest to 200,000 American citizens). The question of the proper response is made still more complex by the fact that intervention by the authorities on behalf of the Native Americans is not to lead to the establishment of an official religion. It was however stated that within those limits there was still room for improvement. Concerning the prisoners, the Special Rapporteur was informed that in general the federal Government was making every effort to meet, as far as possible, the religious needs of Native Americans in federal prisons. With regard to respect for holy days, they were recognized by the federal Department of the Interior, but unfortunately not by all official bodies.

69. The Office of the Legal Counsel of the Department of Justice stated that while the legislation adopted for the benefit of Native Americans was in general positive, there were problems at the level of courts and public services, which, in many cases, did not abide by it. As regards the sacred sites, the Office pointed out that a process was being worked out for taking due account of these places, which, for the most part, were unfortunately not situated on Native American property. In some cases, however, it had not been possible to arrive at a compromise.

III. CONCLUSIONS AND RECOMMENDATIONS

70. The Special Rapporteur has endeavoured to give an account of the legal situation in the United States of America in the field of religion or belief and at the same time to analyse the situation with regard to tolerance and non-discrimination based on religion or belief. His study has dealt with the present picture with regard to religion and belief, and in particular with the "minority" communities in the field of religion and belief. He has made a special effort to analyse both the religious and the non-religious spheres and the relationship between religions, between beliefs and between society and the State.

71. Concerning the legal situation in the field of religion or belief, the existence of a well-developed Constitution and legislation has to be recognized. The two constitutional clauses relating to "non-establishment" and free exercise constitute fundamental guarantees for the protection of religion and belief, particularly within the context of the mosaic of religions and beliefs that is typical of the United States. It is evident, however, that the interpretation of these two clauses by the Supreme Court creates problems, because they are sometimes seen by some people as prejudicing the freedom of religion and belief, more particularly of religious minorities. Firstly, concerning the clause on free exercise, many religious and non-governmental representatives contest the "new" jurisprudence that emerged from the Smith case, establishing that neutral laws of general applicability do not typically offend the free exercise clause merely because in application they incidentally prohibit someone's exercise of religion, and therefore the Government no longer has to demonstrate a compelling interest

unless a law is specifically targeted at a religious practice or infringes upon an additional constitutional right. The religious communities feel that they are thus vulnerable in the face of legislation and political and administrative institutions governed by a conception of the separation of religion and the State which requires that everyone must comply with the same rules and regulations, and which hence regards any request from religions that their specific nature should be respected in their rights and freedoms as a request for privileges. Secondly, concerning the clause on "non-establishment" of religion, the Supreme Court's interpretation, particularly with regard to public aid for religion, recognition of religion in State schools and financial aid given by the Government to religious schools, unfortunately appears from a general viewpoint to be vague and confused, as was stated, incidentally, by members of the Supreme Court. According to John Witte, professor at Emory University in Atlanta, the development of a coherent and comprehensive framework for interpreting and applying the two constitutional religion clauses would be most useful. That unified approach could come in a variety of forms - through grand synthetic cases or through comprehensive statutes, restatements, codes, or even constitutional amendments ("The Essential Rights and Liberties of Religion in the American Constitutional Experiment", Notre Dame Law Review, vol. 71, No. 3, 1996). The Special Rapporteur wholly endorses the approach of taking into account the traditions of other peoples as reflected in the main United Nations human rights instruments, namely, the International Covenant on Civil and Political Rights (article 18 and General Comment No. 22 of the Human Rights Committee; see paragraph 78 below) and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. For example, the prioritizing of liberty of conscience, free exercise and equality principles might well serve as a prototype for the integration of the values enshrined in the free exercise and "non-establishment" clauses. This second approach would be a way of correcting the attitude of the United States of America that human rights are to be treated as belonging to international affairs and not as a domestic matter. We may point out here that this attitude was also noted by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report on his mission to the United States of America (E/CN.4/1998/68/Add.3).

72. There certainly is federal legislation providing protection in the sphere of religion and belief, but it is fragmentary, only dealing with certain aspects of the freedom of religion and belief and certain infringements of that freedom. As regards, in particular, Title VII of the 1964 Civil Rights Act, concerning religious practice at the workplace and the employer's obligation to make "reasonable accommodation", it seems that it has limited effect and that there is a problem of generally restrictive interpretations by the courts in the matter of religion. The Special Rapporteur considers that this legislation needs to be strengthened and hopes that the Religious Freedom in the Workplace Bill and the guidelines for the protection of freedom of religion in federal institutions announced by the Clinton Administration will contribute to that end. In general, the Special Rapporteur considers that in the absence of a consistent and detailed framework within which the two constitutional clauses on "non-establishment" and free exercise of religion could be interpreted and applied, a general law on freedom of religion and belief based on the relevant international human

rights instruments and conforming with those two clauses would provide appropriate and necessary legal protection for the freedom of religion and belief in general, but above all for communities in the field of religion or belief. Such a law could also be able to incorporate the advantages of the two constitutional clauses while encouraging State-religion relations based on an appropriate dynamic equilibrium and avoiding extreme situations of "anti-religious clericalism" and "religious clericalism".

73. Finally, ratification of the Convention on the Rights of the Child by the United States is strongly encouraged: it would be a logical consequence of the human rights policy procla med by that country at the international level. It will be remembered, however, that as happened in the case of Mr. Bacre Waly Ndiaye's mission, the federal authorities which are supposed to represent the states of the Union at the international level did not take it upon themselves to organize meetings between the Special Rapporteur and the state authorities. Furthermore, most of the official and non-official representatives that the Special Rapporteur met in the states did not seem to know the international human rights instruments. Similarly, statements by certain public figures irritated by United Nations special rapporteurs' visits to the United States are surprising to say the least, in that they would seem to imply that the world's leading Power fears United Nations "domination", on the one hand, and on the other, wishes to set itself up as entitled to give other countries lessons while rejecting criticisms of its domestic situation, which is seen in a positive light without any limitations or reservations. It would therefore be desirable that these individual positions should remain incidental phenomena not affecting the move towards a more open policy both at home and abroad which is evident in the United States and that the country's commitment in the field of human rights should take on a practical aspect - rather than remaining simply a matter of form - both internationally and nationally.

74. As far as tolerance and non-discrimination based on religion or belief are concerned, the Special Rapporteur notes that the United States, a vast mosaic of religions and beliefs (as can be seen in some Washington avenues consisting of an extraordinary succession of places of worship of all denominations), not only extends a welcome to different faiths, but itself begets them, as a country which is free and open to all religions and beliefs. The representation of the United States through the symbol of the mosaic is in fact relevant, because although there is a dominant European and Judaeo-Christian element, the great variety of denominations in the majority Christian religion and of minorities in the field of religion and belief leads one to see all denominations as minorities. At the end of his study, the Special Rapporteur considers that the actual situation in the United States in the field of tolerance and non-discrimination is in general satisfactory. There are nevertheless some evident exceptions that must be pointed out, particularly as regards the situation of Native Americans.

The Jewish community

75. The Jews are satisfied with their lot as a whole and do not hesitate to describe their situation as privileged, and indeed unique, in particular because of a degree of religious liberty which the representatives of the Jewish community consider to be without equal elsewhere in the world. Faced

with problematical situations, which are described as exceptions, involving hate crimes, the Supreme Court's decision in the Smith case and religion at the workplace, the community is displaying real vigour both through the dialogue between religions and through a militancy in making claims and seeking to promote greater awareness in the field of religion.

The Muslim community

76. The situation of Muslims is distinctly less favourable, although taken all in all it is not negative. The Muslim community can certainly flourish freely in the religious sphere, but it has to be recognized that there is an islamophobia reflecting both racial and religious intolerance. This is not the fault of the authorities, but of very harmful activity by the media in general and the popular press in particular, which consists in putting out a distorted and indeed hate-filled message treating Muslims as extremists and terrorists. American public opinion - and hence society - is thus informed - and formed - by negative representations of the Muslims. The Special Rapporteur raises the question of the responsibility of the media for manifestations - direct or indirect, intentional or not - of racial and religious intolerance and discrimination in society, on the part of citizens, but also of officials acting on their own initiative and of private corporations, manifestations which may be marginal, but nevertheless do really affect Muslims. It is up to the public authorities to help combat the iniquitous representation of Muslims. Here the Special Rapporteur would like to acknowledge the initiatives taken by President Clinton and his Government directly or indirectly for the benefit of Muslims and aimed at the development of strategies for preventing intolerance and discrimination based on religion. Efforts to combat the ignorance and intolerance purveyed by the media, above all through preventive measures in the field of education, should be given priority. The interdenominational dialogue practised in certain States, particularly California, as was evident at the time of the Gulf war, can also serve as an example to the international community. The activities of the Interreligious Council of Southern California deserve to be better known and should be taken as a model.

Other communities in the field of religion or belief

77. The situation of Asian religions (Buddhism, Hinduism, etc.) and "marginal" religions (Jehovah's Witnesses, Mormons outside Utah, Seventh-Day Adventists, Assembly of God, etc.) is generally satisfactory. There are of course exceptions, such as cases of discrimination at the workplace, and obstacles relating to places of worship and attacks on them. These obstacles and acts of discrimination are sometimes the consequences of the Smith case and a form of secularism, as explained in the section on the constitutional clauses. They can also be interpreted in a general way as manifestations of a conflict between intense religion and unintense religion. In accordance with this interpretation, it appears finally that in general the position of minority communities in the sphere of religion or belief corresponds to that of the majority Christian communities, with the proviso that any difficulties encountered by the latter are less acute precisely because of their majority status.

78. On the subject of atheism, the Special Rapporteur notes that in its general comment No. 22 of 20 July 1993 on article 18 of the International Covenant on Civil and Political Rights, the Human Rights Committee pointed out that "the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views" (HRI/GEN/1/Rev.3, p. 37, para. 5).

Native Americans

79. A situation which raises a problem is that of the Native Americans: they have in the past been exposed to a policy of assimilation which many of them describe, with surprising insistence, as genocide and which continues to have effects even today. In recent years a policy in favour of these indigenous peoples has been set in motion, particularly under the presidency of Mr. Clinton, but it needs to be strengthened in the religious sphere.

80. As far as legislation is concerned, while noting advances in recent years in the instruments emerging from the legislature and the executive which are designed to protect Native Americans' religion in general (American Indian Religious Freedom Act) and in particular (Native American Graves Protection and Repatriation Act, Executive Order on Indian Sacred Sites, Executive Memorandum on Native American Access to Eagle Feathers), the Special Rapporteur identified weaknesses and gaps which diminish the effectiveness and hinder the application of these legal safeguards. Concerning the American Indian Religious Freedom Act, the Supreme Court has declared that this law was only a policy statement. As for the Executive Order on Indian Sacred Sites, unfortunately, it does not contain an "action clause", leaving the tribes without the needed legal "teeth". Higher standards or the protection of sacred sites are needed and effective tribal consultation should be ensured. These recommendations are all the more necessary in light of the October 1997 Advisory Council on Historic Preservation regulations and the January 1997 bill (see paragraph 59 (a) and (b) above). Concerning the Native American Graves Protection and Repatriation Act of 1990, it is apparent that its coverage was too limited; it is of the utmost importance that concrete solutions be found to solve the repatriation conflict between the scientific community and tribal governments. It is also essential to secure genuine de jure and de facto protection of Native American prisoners' religious rites.

81. In general, the Special Rapporteur recommends that steps should be taken to make sure that there is no conflict or incompatibility between the different federal, state and local laws, so as to arrive at a uniformity - or at least a convergence - in the legal protection of indigenous peoples' religion throughout the territory of the United States, while guaranteeing effective application of these texts, by everyone, for everyone and everywhere, all other things being equal (we may cite as an example the 1994 Executive Memorandum on Native American Access to Eagle Feathers - see paragraph 59 (c) above). It is also recommended that in the legal sphere Native Americans' system of values and traditions should be fully recognized, particularly as regards the concept of collective property rights, inalienability of sacred sites and secrecy with regard to their location. Because of the decision in the Smith case, which affects Indians inasmuch as it seems that in their case there is a lack of understanding of their values

and religion, since they are asked to "prove" their religion, and in particular the religious significance of their sacred sites, the Special Rapporteur reiterates his recommendations regarding, firstly, the adoption of a unified approach to the interpretation and application of the two constitutional clauses on "non-establishment" and free exercise of religion and, secondly, the adoption of a general law on freedom of religion and conviction, on the understanding that the special status of Native Americans should be taken into account and backed up by the principle of compensatory inequality in order to arrive at greater equality.

82. Because of economic and religious conflicts affecting in particular sacred sites, the Special Rapporteur wishes to point out that the freedom of belief, in this case that of the Native Americans, is a fundamental matter and requires still greater protection. The freedom to manifest one's belief is also recognized, but can be subject to limitations insofar as they are strictly necessary and provided for in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and in article 18 of the International Covenant on Civil and Political Rights. The expression of the belief has to be reconciled with other rights and legitimate concerns, including those of an economic nature, but after the rights and claims of the parties have been duly taken into account, on an equal footing (in accordance with each party's system of values). As far as Native Americans' access to sacred sites is concerned, this is a fundamental right in the sphere of religion, the exercise of which must be guaranteed in accordance with the above-mentioned provisions of international law on the matter.

83. These recommendations apply of course to the two particular situations of Mount Graham and Black Mesa. In the first case, according to information received since the visit, the Italian Parliament has adopted new legislation forbidding Italian participation in the project to set up a telescope, which would be a profanation of the Mount Graham site. As regards the permit delivered to the University of Arizona by the federal water and forest service for the establishment of telescopes on Mount Graham, which is a sacred site of the Apaches, the Special Rapporteur considers it necessary to make sure officially that the conditions stated above with regard to international law have been respected. On the subject of Black Mesa, the Special Rapporteur also calls for the observance of international law on freedom of religion and its manifestations.

84. Concerning the religious rights of Native American prisoners, apart from the recommendation made in the section on legal issues, the Special Rapporteur recommends that the positive and practical action taken in many federal prisons (fully compatible with security requirements, e.g. ending the practice of cutting their hair) should become general throughout the United States prison system and that steps should be taken to ensure, particularly through training, and perhaps through penalties for prison officers and governors, that these rights are not treated as privileges that can be granted or refused at the whim of an authority or official.

85. In general, it is essential to make society and the whole of the administrative and political apparatus aware of the indigenous peoples' religions and spiritual beliefs in order to prevent any attitude - often

involuntary because due to ignorance - of discrimination and intolerance in the field of religion (cutting young Native Americans' hair in schools, etc.). The participation of Native Americans in the executive is particularly important and helps to promote greater awareness and reduce the marginalization of these people; it is therefore to be welcomed. It is also desirable that Native Americans, who in general suffer from an accumulation of unfavourable conditions - economic, social, cultural and religious - should benefit in practice from a policy of support to compensate for these inequalities. The Special Rapporteur fully understands that, as the authorities stated, the Native American question is to be viewed in the context of a long-term process, and he welcomes the advances made in recent years. Some official representatives, however, said that more could be done; the Special Rapporteur shares that view and would encourage the authorities to act accordingly.

86. Finally, the Special Rapporteur wishes to emphasize that education can play a primary role in making people aware of the values of tolerance and non-discrimination in the field of religion and belief and of the richness of every denomination and belief. In schools, in particular, it can inculcate values based on human rights and thus encourage a culture of tolerance. The federal authorities have launched such a preventive strategy through the programme "Preventing Youth Crime: A Manual for Schools and Communities". The Special Rapporteur would encourage the federal Government to extend and develop a national policy coordinated at the federal and state levels in the field of education in order to reach all educational institutions, teachers, pupils and students. It is also strongly recommended that non-governmental organizations should make a contribution.

87. The Special Rapporteur also recommends a campaign for greater sensitivity in the media so that they do not put out a biased and harmful message with regard to religion and beliefs. There have to be limits on the fundamental freedom of the press when it generates actual intolerance, the antithesis of freedom. There is something wrong if certain media hide behind the fundamental principle of freedom in order to pervert it. The Special Rapporteur reiterates his recommendations regarding action to be taken under the advisory services programme (E/CN.4/1995/91, p. 147) and particularly the organization of training workshops for representatives of the media. He also calls for the establishment of machinery for consultation between the media and the religious communities. Finally, he invites media proprietors to show a more acute sense of responsibility in all fields.

88. Last but not least, the Special Rapporteur wishes to emphasize the value of the interdenominational dialogue which he found to be taking place in certain places he visited, and particularly in California.

ANNEX

Membership of religious groups in the United States 1/

1. These membership figures generally are based on reports made by officials of each group, and not on any religious census. Figures from other sources may vary. Many groups keep careful records; others only estimate. Not all groups report annually. Christian Church membership figures reported in this table are inclusive and refer to all "members", not simply full communicants or confirmed members. Definitions of "member", however, vary from one denomination to another. Only data reported within the past 10 years are included.

2. The number of houses of worship appears in parentheses. An asterisk (*) indicates that the group declines to make membership figures public. Groups reporting fewer than 5,000 members are not included. If membership numbers are not given, only those Churches with 50 or more houses of worship are listed.

Religious group	Members
Adventist Churches:	
Advent Christian Church (317)	27,100
Church of God General Conference (Oregon, IL; Morrow, GA) (88)	5,040
Seventh-Day Adventist Church (4,297)	790,731
American Rescue Workers (15)	8,000
Apostolic Christian Churches of America (80)	11,450
Baha'i Faith	130,000 2/
Baptist Churches:	
American Baptist Association (1,705)	250,000
American Baptist Churches in the USA (5,823)	1,517,400
Baptist Bible Fellowship International (3,600)	1,500,000
Baptist General Conference (857)	135,008
Baptist Missionary Association of America (1,355)	231,191
Conservative Baptist Association of America (1,084)	200,000
Free Will Baptist, National Association of America (2,491)	213,716
General Association of General Baptists (876)	74,156

General Association of Regular Baptists Churches (1,458)	136,380
National Baptist Convention of America (2,500)	3,500,000
National Baptist Convention, USA (33,000)	8,200,000
National Missionary Baptist Convention of America*	2,500,000
North American Baptist Conference (263)	43,928
Progressive National Baptist Convention (2,000)	2,500,000
Separate Baptists in Christ (100)	8,000
Southern Baptist Convention (40,039)	15,663,296
Brethren in Christ Church (200)	18,529
Brethren (German Baptists):	
Brethren Church (Ashland, OH) (121)	13,578
Church of the Brethren (1,114)	143,121
Grace Brethren Churches, Fellowship of (273)	39,511
Old German Baptist Brethren (57)	5,623
Buddhist Churches of America	780,000 2/
Christian Brethren (Plymouth Brethren) (1,150)	98,000
Christian Church (Disciples of Christ) (4,036)	929,725
Christian Churches and Churches of Christ (5,579)	1,070,616
Christian Congregation (1,431)	113,259
Christian and Missionary Alliance (1,957)	307,366
Christian Union, Churches of Christ in (240)	10,400
Church of Christ, Scientist (2,400)	*
Church of the United Brethren in Christ (234)	24,095
Churches of Christ (13,020)	1,655,500

Churches of God:	
Churches of God, General Conference (349)	31,745
Church of God (Anderson, IN) (2,307)	224,061
Church of God (Seventh Day), Denver, CO (161)	6,000
Church of God by Faith (145)	8,235
Church of God, Mountain Assembly (118)	6,140
Church of the Living God (170)	42,000
Church of the Nazarene (5,135)	631,900
Community Churches, International Council of (517)	250,000
Congregational Christian Churches, National Association of (426)	70,000
Conservative Congregational Christian Conference (201)	36,864
Eastern Orthodox Churches:	
American Carpatho-Russian Orthodox Greek Catholic Church (78)	12,541
Antiochian Orthodox Christian Archdiocese of North America (184)	300,000
Apostolic Catholic Assyrian Church of the East, North American Diocese (22)	120,000
Armenian Apostolic Church of America (28)	180,000
Armenian Church of America, Diocese of the (72)	414,000
Coptic Orthodox Church (85)	180,000
Greek Orthodox Archdiocese of North and South America (approx. 500)	*
Orthodox Church in America (600)	2,000,000
Romanian Orthodox Episcopate of America (37)	65,000
Russian Orthodox Church in the USA, Patriarchal Parishes (38)	9,780
Russian Orthodox Church Outside of Russia (147)	*
Serbian Orthodox Church in the USA & Canada (68)	67,000

Syrian Orthodox Church of Antioch (17)	32,500
Ukrainian Orthodox Church of America (27)	5,000
Episcopal Church (7,415)	2,536,550
Evangelical Church (132)	12,444
Evangelical Congregational Church (150)	23,422
Evangelical Covenant Church*	91,458
Evangelical Free Church of America (1,224)	242,619
Friends:	
Evangelical Friends International-North American Region (92)	8,666
Friends General Conference (602)	31,415
Friends United Meeting (503)	43,680
Full Gospel Fellowship of Churches and Ministers International (650)	195,000
General Church of the New Jerusalem (34)	5,587
Grace Gospel Fellowship (128)	60,000
Hindu	910,000 2/
Independent Fundamental Churches of America (670)	69,857
Islam	5,100,000 2/
Jehovah's Witnesses (10,541)	966,243
Jewish organizations:	
Union of American Hebrew Congregations (Reform) (876)	1,300,000 2/
Union of Orthodox Jewish Congregations of America (1,200)	1,000,000 2/
United Synagogues of Conservative Judaism, The (800)	2,000,000 2/
Latter-Day Saints:	
The Church of Jesus Christ of Latter-Day Saints (Mormon) (10,417)	4,711,500
Reorganized Church of Jesus Christ of Latter-Day Saints (1,160)	177,779

Lutheran Churches:

Apostolic Lutheran Church of America (60)	7,700
Church of the Lutheran Brethren of America (118)	24,906
Church of the Lutheran Confession (70)	8,783
Evangelical Lutheran Church in America (10,955)	5,190,489
Evangelical Lutheran Synod (135)	22,371
Free Lutheran Congregations, Association of (230)	30,769
Latvian Evangelical Lutheran Church in America (57)	12,097
Lutheran Church-Missouri Synod (6,154)	2,594,555
Lutheran Churches, American Association of (91)	17,973
Wisconsin Evangelical Lutheran Synod (1,252)	412,478

Mennonite Churches:

Beachy Amish Mennonite Churches (95)	6,968
Church of God in Christ (Mennonite) (96)	11,037
Hutterian Brethren (398)	41,600
Mennonite Brethren Churches, The Conference of (147)	19,218
Mennonite Church (986)	90,812
Mennonite Church, The General Conference (268)	35,852
Old Order Amish Church (898)	80,820

Methodist Churches:

African Methodist Episcopal Church (8,000)	3,500,000
African Methodist Episcopal Zion Church (3,098)	1,230,842
Evangelical Methodist Church (132)	8,500
Free Methodist Church of North America (1,068)	74,707
Primitive Methodist Church, USA (78)	7,234
Southern Methodist Church (127)	7,669

United Methodist Church (36,361)	8,538,662
The Wesleyan Church (USA) (1,624)	115,867
Metropolitan Community Churches, Universal Fellowship of (291)	30,000
Missionary Church (315)	29,542
Moravian Churches:	
Moravian Church in America, Northern Province (95)	27,656
Moravian Church in America, Southern Province (56)	21,513
National Organization of the New Apostolic Church of North America (554)	41,863
Pentecostal Churches:	
Apostolic Faith Mission Church of God (26)	11,450
Apostolic Overcoming Holy Church of God (162)	12,390
Assemblies of God (11,823)	2,387,982
Bible Church of Christ (6)	6,850
Church of God (Cleveland, TN) (6,060)	753,230
Church of God in Christ (15,300)	5,499,875
Church of God in Prophecy (1,961)	72,859
Elim Fellowship (170)	21,038
International Church of the Foursquare Gospel (1,742)	227,307
International Pentecostal Church of Christ (73)	5,411
International Pentecostal Holiness Church (1,653)	157,163
Open Bible Standards Cs. (361)	45,988
Pentecostal Assemblies of the World (1,760)	1,000,000
Pentecostal Church of God (1,224)	119,200
Pentecostal Free Will Baptist Church (149)	12,640
United Pentecostal Church International (3,790)	
Polish National Catholic Church (143)	50,000

Presbyterian Churches:	
Associated Reformed Presbyterian Church (General Synod) (207)	38,996
Cumberland Presbyterian Church (783)	87,896
Evangelical Presbyterian Church (177)	56,449
Korean Presbyterian Church in America (203)	26,988
Orthodox Presbyterian Church (189)	21,131
Presbyterian Church in America (1,299)	267,764
Presbyterian Church (USA) (11,361)	3,669,489
Reformed Presbyterian Church of North America (70)	5,657
Reformed Churches:	
Christian Reformed Church in North America (716)	206,789
Hungarian Reformed Church in America (27)	9,780
Protestant Reformed Churches in America (27)	6,318
Reformed Church in America (908)	306,312
United Church of Christ (6,145)	1,472,213
Reformed Episcopal Church (102)	6,084
Roman Catholic Church (19,726)	60,280,454
Salvation Army (1,264)	453,150
Unitarian Universalist Association of North America (1,039)	209,129
United Brethren in Christ (239)	24,671

Notes

1/ Sources: Yearbook of American & Canadian Churches 1997: Prepared and Edited for the Communication Commission of the National Council of Churches of Christ, Kenneth B. Bedell (ed.), National Council of Churches of Christ, Abingdon Press, 1997; The World Almanac, 1997.

2/ Based on reliable estimates; figures from other sources may vary.